

United States
Circuit Court of Appeals
For the Ninth Circuit.

WILD GOOSE MINING & TRADING COMPANY,
a Corporation,
Appellant,

vs.

THE MIOCENE DITCH COMPANY, a Corporation,
and CAMPION MINING & TRADING COMPANY,
a Corporation,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Alaska, Second Division.

FILED

SEP 17 1912

No. 2174

United States
Circuit Court of Appeals
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a Corporation,

Appellant,

VS.

THE MIOCENE DITCH COMPANY, a Corporation,
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Appellees.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Attorneys of Record.

W. H. METSON, San Francisco, California,

G. J. LOMEN, Nome, Alaska,

Attorneys for Plaintiff.

GEO. D. SCHOFIELD, Nome, Alaska,

Attorney for Defendant Campion Mining
and Trading Company.

ELWOOD BRUNER, Nome, Alaska,

Attorney for Petitioner in Intervention.

*In the District Court for the District of Alaska,
Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

**Bill of Exceptions to Order Refusing Leave to the
Wild Goose Mining and Trading Company, a
Corporation, to Intervene in This Action.**

BE IT REMEMBERED, that the plaintiff and
defendant herein filed the following pleadings and
papers herein, all of which are set forth in words and
figures as follows: [1*]

*Page-number appearing at foot of page of original certified Record.

*In the United State District Court, for the District of
Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
and TRADING COMPANY, a Corporation,
Defendants.

Complaint.

Plaintiff complains of the defendants and for
cause of action, alleges:

I.

That plaintiff is now, and ever since the 27th day
of February, 1902, has been, a corporation organized
and existing under and by virtue of the laws of the
State of California, and is now, and ever since the
month of June, 1902, has been, engaged in business
and authorized to do business in the District of
Alaska. That the Campion Mining and Trading
Company is and was at the time of the commission
of the wrongful acts hereinafter alleged a corpora-
tion engaged in business in Alaska.

II.

That in and by its charter and articles of incor-
poration, the plaintiff corporation was, and is, au-
thorized and empowered, among other things, to own
and operate mines and mining claims within the Dis-
trict of Alaska, to own and appropriate water, and
water rights, and to build canals, ditches, flumes and
aqueducts, and to lay pipes for supplying its mines

with water and for the general use of the public in the District of Alaska, and plaintiff corporation has ever since the month of June, 1902, been continuously engaged in said business.

III.

That Nome and Snake rivers are and were, at all times herein [2] mentioned, natural watercourses, having their sources in the Sawtooth range of mountains, and emptying into the Bering Sea, being each approximately fifty miles in length, and running in the same general direction, and said rivers and their tributaries do now, and have at all times herein mentioned, flown through the unsurveyed public lands of the United States. That placer gold in paying quantities was discovered by the miners upon Snake and Nome rivers and their tributaries, in the fall of the year 1898, and thereafter, during the year 1898, and subsequent years, several thousand persons in number came into the country comprising the watershed of said two streams and located and appropriated placer claims and engaged in mining the same. That most of said placer claims embraced in the region aforesaid cannot be profitably mined except with large volumes of water under pressure, and it at once became, and now is, the custom among the miners in said region, to divert the waters of the natural streams in said region, and to carry the same in ditches, flumes and pipe-lines to be used in mining said placer claims. That by the customs of miners within said region, and all other mining regions of the District of Alaska, it has become established that the prior appropriator of the waters of a stream flow-

ing through the regions is entitled to the prior use of the same.

IV.

That plaintiff is the owner of, by virtue of prior location, appropriation and diversion made by it and its grantors, of all the waters of Nome river to the extent of three thousand miner's inches, measured under a four-inch pressure (3,600 cubic feet per minute), which plaintiff has diverted by means of a ditch flume and pipe-line, the intake of which is on said Nome river at a point on the right limit thereof about five hundred feet below the mouth of Buffalo Creek.

V.

That plaintiff and its grantors, for the purpose of using said water for mining purposes, had, long prior to the wrongful acts [3] of defendants, hereinafter alleged, diverted and carried all the said waters of Nome river from the intake aforesaid to the extent of two thousand one hundred miner's inches in a ditch, flume and pipe-line, a distance of more than thirty miles, and prior to the wrongful acts of defendants hereinafter alleged, plaintiff was actually engaged in using all the said waters of Nome river so diverted and carried to the extent aforesaid, partly in mining upon placer mining claims owned or leased by it, and partly farming the same out for hire, to be used for mining purposes. That plaintiff is now actually engaged in enlarging its said ditch, flume and pipe-line to a capacity of three thousand miner's inches.

VI.

That on or about the 23d day of July, 1904, the defendants wrongfully and unlawfully diverted from Buffalo creek, a tributary of said Nome river, coming in above plaintiff's intake, all of the waters of said Buffalo creek, varying from four hundred to one thousand miner's inches of water which would otherwise flow down and into plaintiff's ditch, flume and pipe-line, and wrongfully and unlawfully carried the same around and below plaintiff's said intake and its said ditch, flume and pipe-line, and deprived the plaintiff of the use of the same; that since the morning of August 3d, 1904, the said defendants have continuously so diverted and carried around and below plaintiff's said intake and ditch, flume and pipe-line, all the waters of said Buffalo creek, and are now actually so doing.

VII.

That by reason of the said wrongful diversion of the waters of said Buffalo creek by the defendants, the amount of water in Nome river at plaintiff's intake has been, and is now actually reduced in volume so that the same does not now exceed four hundred miner's inches, and by reason thereof plaintiff has been compelled to discontinue a large part of its mining operations, and has been and is now being irreparably damaged and injured. [4]

VIII.

That the value of the use of the waters of said Nome river which have been so wrongfully and unlawfully diverted away from plaintiff by the defendants, is and was, at all the times the same were so

diverted, far in excess of one thousand dollars per day.

IX.

That defendants threaten to, and will, unless restrained by this Honorable Court, continue to so wrongfully and unlawfully divert and carry away from plaintiff the waters of said Buffalo creek which would otherwise flow down Nome river into plaintiff's ditch, flume and pipe-line, to the irreparable damage of plaintiff.

X.

That plaintiff has no adequate remedy at law for the wrongful acts of defendants hereinbefore alleged, and are remediless in the premises except by an injunction to be issued herein restraining the defendants from the wrongful diversion of the waters of Buffalo creek herein complained of.

WHEREFORE, plaintiff prays—

1. That an order to show cause be made and issued herein ordering and directing the defendants to show cause before this Court, at a convenient day to be named therein, why an injunction should not be ordered and issued herein, restraining and enjoining the defendants, during the pendency of this action, from diverting from, or away from Buffalo creek, any of the waters thereof in such a manner as to lessen the present supply of plaintiff at its intake on Nome river to less than two thousand miner's inches; that in the meantime, and until the hearing of said order to show cause, the defendants be so restrained, and that upon the final hearing said injunction be made perpetual.

2. That it be adjudged and decreed that plaintiff is now the owner by prior appropriation and diversion of the waters of Nome river to the extent of two thousand one hundred miner's inches (twenty-four hundred cubic feet per minute) to be diverted at its intake [5] on Nome river about five hundred feet below the mouth of Buffalo creek, and that it be further adjudged that in case said plaintiff's ditch, flume and pipe-line be completed with reasonable diligence to a capacity of three thousand miner's inches, that plaintiff's prior right and ownership shall extend to said amount.

3. That an accounting be taken of the damages sustained by plaintiff by reason of the wrongful diversion by defendants of said waters as herein alleged, and that plaintiff have judgment for such sum as may be found due on said accounting.

4. For all other relief to which plaintiff may be in equity entitled, including costs.

W. H. METSON,
IRA D. ORTON,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

J. M. Davidson, being first duly sworn, deposes and says, that he is the President of plaintiff corporation; that he has read the above and foregoing complaint and knows the contents thereof, and the same is true of affiant's own knowledge.

J. M. DAVIDSON.

Subscribed and sworn to before me this 8th day
of August, 1904.

[Seal]

JAS. W. BELL,

Notary Public in and for District of Alaska.

United States of America,

District of Alaska,—ss.

W. L. Leland, being first duly sworn, deposes and
says, that he is the agent of said plaintiff corporation
duly appointed pursuant to law upon whom service
of process may be made; that he has read the above
and foregoing complaint and knows the contents
thereof, and the same is true of affiant's own knowl-
edge.

W. L. LELAND.

Subscribed and sworn to before me this 8th day
of August, 1904.

[Seal]

G. B. BRUBAKER,

Notary Public in and for District of Alaska.

[Endorsed]: Filed in the Office of the Clerk of the
U. S. Dist. Court, Alaska, Second Division, at Nome,
Alaska. Aug. 8, 1904. Geo. V. Borchsenius, Clerk.
By G. J. L. [6]

*In the United States District Court in and for the
District of Alaska, Second Division.*

No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Demurrer to Complaint.

Come now the defendants above named and demur
to plaintiff's complaint upon the grounds and for
the reasons:

I.

That the Court has no jurisdiction of the subject
of the action stated and set forth in the complaint.

II.

That several causes of action have been improperly
united in said complaint.

III.

That the complaint does not state facts sufficient
to constitute a cause of action.

WILLIAM A. GILMORE,
Attorney for Defendants.

Service of a copy of within and foregoing de-
murrer acknowledged this 26th day of September,
A. D. 1904.

IRA D. ORTON,
Of Attorneys for Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. Sept. 26, 1904. Geo. V. Borchsenius, Clerk. By Jno. H. Dunn, Deputy Clerk. [7]

*In the United States District Court in and for the
District of Alaska, Second Division.*

#1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Answer of Campion Mining & Trading Company.

Comes now the Campion Mining & Trading Company, a corporation, one of the defendants above named, and for answer to the plaintiff's complaint, alleges as follows:

1.

Answering paragraph two of plaintiff's complaint, defendant alleges that it has no knowledge of the facts therein alleged and contained, and therefore upon information and belief denies each and every allegation therein contained.

2.

Answering paragraph four of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof.

3.

Answering paragraph five of plaintiff's complaint,

defendant denies each and every allegation therein contained, and the whole thereof.

4.

Answering paragraph six of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof, excepting what is hereinafter generally admitted in defendant's affirmative answer.

5.

Answering paragraphs seven, eight, nine and ten of plaintiff's [8] complaint, defendant denies each and every allegation therein contained, and the whole thereof.

And for an affirmative answer to plaintiff's complaint, defendant alleges:

I.

That the defendant, *Campion Mining & Trading Company*, a corporation, is now, and ever since the 6th day of March, 1903, has been a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and is now, and ever since said date has been engaged in business and authorized to do business in the District of Alaska.

II.

That by its Charter and Articles of Incorporation said defendant, *Campion Mining & Trading Company*, was and is authorized and empowered, among other things, to own and operate mines and mining property within the District of Alaska; to own, operate and hold water and water rights, and to build and control ditches, flumes and aqueducts, and to lay pipes and flumes for supplying its mines and mining

property with water, and for the general use of the public in said District of Alaska, and said defendant has ever since said 6th day of March, 1903, been continuously engaged in said business.

III.

That Nome and Snake rivers are, and were at all times herein mentioned, natural watercourses, having their source and head tributaries in the Sawtooth Range of Mountains, and sloping towards Bering Sea, being each approximately fifty miles in length, and running in the same general direction; and said rivers and their tributaries do now flow, and have at all times herein mentioned, been flowing through the unsurveyed public lands of the United States.

That placer gold, in paying quantities, was discovered by the miners upon Snake and Nome rivers and their tributaries, in the fall of the year 1898, and thereafter during the year 1898, and in [9] subsequent years, several thousand persons in numbers, came into the country comprising the watersheds of said rivers, and located placer mining claims and engaged in mining the same; that most of said placer mining claims embraced within the region aforesaid, cannot be profitably mined and operated except with a large volume of water under pressure, and it at once became, and now is the custom among the miners in said region, to divert the waters of the natural streams in said region, and to carry the same in ditches, flumes and pipe-lines, to be used in mining said placer ground; that by the customs of the miners in said region, and all other regions of the District of Alaska, it has become established that the

person making the prior location, appropriation and diversion of the waters of a stream flowing through the region above described, is entitled to the prior use of the same.

IV.

That Deep Canyon creek, Buffalo creek, Divide creek and Dorothy creek, form the head tributaries or headwaters of said Nome river.

V.

That during the summer of 1900, defendant and its grantors and predecessors in interest, located and appropriated all of the waters flowing in said Buffalo creek, at a point on said creek about one mile above the mouth thereof, and during said year 1900, built and constructed a dam on said creek, and diverted all of the water flowing in the channel of said creek by means of a ditch commencing at said dam; that said water was located, appropriated and diverted for the purpose of being conveyed, carried and taken by means of a ditch and pipe-line, to the placer mining ground above described, and there to be sold or "farmed" out to the miners in the locality for mining purposes; and also, to be used by the defendant and its predecessors in interest on said Dorothy creek and other creeks, in mining and hydraulicking mining ground owned and controlled by the defendant under [10] the level or line of its said ditch.

VI.

That the defendant and its grantors and predecessors in interest have ever since said year 1900 been

engaged in constructing and building their said ditch and pipe-line from said dam or intake on said Buffalo creek, and are now engaged in extending and completing the same for the purposes hereinbefore set forth, as diligently as possible, the weather and season of the year permitting, and that the carrying capacity of said ditch, when completed, will be far in excess of all the waters flowing in said Buffalo creek at the head or intake of said ditch.

VII.

That the purposes for which said water was located, appropriated and diverted by the defendant, its grantors and predecessors in interest, as aforesaid, were and are reasonable, necessary, useful and not wasteful.

VIII.

That the location, appropriation and diversion of all the waters of said Buffalo creek by the defendants, its grantors and predecessors in interest, was long prior in time and right to the alleged location, appropriation and diversion of the waters of Nome River by the plaintiff.

IX.

That by reason of said location, appropriation and diversion above described, the defendant is now the owner and entitled to the possession and use of all of the waters flowing in said stream.

And for a further, second and affirmative answer to the plaintiff's complaint, defendant alleges:

I.

Defendant repeats and reaffirms paragraphs I, II, III and IV of its first affirmative answer, as para-

graphs I, II, III and IV of this further, second and affirmative answer to plaintiff's complaint. [11]

V.

That said defendant is now, and it and its grantors and predecessors in interest were, at all the times mentioned in plaintiff's complaint, the owners in fee of most all of the mineral ground on the headwaters of said Nome River, including the said Buffalo creek, Dorothy creek and Divide creek, and the ground on either side of and including the bed of Nome river between said Buffalo creek and Dorothy creek, and it and its grantors and predecessors in interest, have been in the continued and uninterrupted possession thereof, long prior to the times hereinbefore mentioned. That the greater part of said placer mining ground above described, lies below said Buffalo creek, and comprises an area of about 6,000 acres of mineral-bearing ground valuable for the native gold contained within the auriferous gravel thereof.

VI.

That the defendant is the owner of by virtue of a prior location, appropriation and diversion, made by it and its grantors, of all of the waters of said Buffalo creek, to the extent of all the waters in said stream, running in the channel of said stream; that said defendant and its grantors, long prior to the alleged location and appropriation of the plaintiff on said Nome river, mentioned in its complaint, had located, appropriated, diverted and used all the water running and flowing in said Buffalo creek at a point about one-fourth of a mile above its mouth, for mining purposes on Dorothy creek, and the placer ground

on the limits of said Nome river.

That after locating, appropriating and diverting the waters of said Buffalo creek, the defendant and its grantors as rapidly as possible, constructed from its intake on said Buffalo creek, a ditch and pipe-line, through its said placer mining ground, to said Dorothy creek, a distance of about eight miles; that during the construction of said ditch and pipe-line, defendant conducted mining operations on its placer ground on the right limit of Nome river, near Divide creek, [12] using the waters of said Buffalo creek for hydraulicking.

That while so engaged and employed in said work the defendant, by deed, granted the plaintiff an easement, or right of way, across its said placer ground, below the level and line of defendant's ditch, for the plaintiff to build what is known as the Nome river extension of plaintiff's Hobson creek ditch; that plaintiff accepted said right of way and constructed said extension thereafter with full knowledge of defendant's ownership, control and prior right to all of said waters of said Buffalo creek, and the other head tributaries of said Nome river; that at the time of said grant, and long prior to the time plaintiff made any diversion, appropriation or use of any of the waters of said Nome river, and long prior to plaintiff's completion of said Nome river extension ditch, plaintiff assisted and aided the defendant in its construction of said Buffalo Dorothy creek ditch and pipe-line, commonly known as the Campion lower ditch.

That by virtue of said grant, and by virtue of said

acts of plaintiff, the plaintiff is now estopped from asserting any claim of title to any of the waters of said Buffalo creek in the possession, use and control of the defendant.

VII.

That by reason of said location, appropriation, diversion, and use of the waters of said Buffalo creek, as above set forth, the defendant is the owner and entitled to the possession of all of said water.

Wherefore, defendant prays that the plaintiff take nothing by its complaint, and that the defendant have and recover its costs and disbursements.

WILLIAM A. GILMORE,
Attorney for Defendant.

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn, deposes and says: [13]

That he is the attorney for the answering defendant, Campion Mining & Trading Company, a corporation; that he prepared the foregoing answer, and knows the contents thereof, and that the same is true as he verily believes.

That he makes this verification for the defendant for the reason that all of the officers and agents who could make this verification for the defendant are now without the District of Alaska, and without the jurisdiction of the above-entitled court.

WILLIAM A. GILMORE.

18 *Wild Goose Mining and Trading Company*

Subscribed and sworn to before me, this 4th day of April, 1905.

[Seal]

J. W. ALBRIGHT,

Notary Public, District of Alaska.

Received a copy of the above and foregoing answer, this 4th day of April, 1905.

Of Attorneys for Plff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. Apr. 5, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [14]

*In the United States District Court in and for the
District of Alaska, Second Division.*

#1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Answer of T. A. Campion.

Comes now the above-named defendant, T. A. Campion, and for answer to plaintiff's complaint, alleges as follows:

1.

He denies each and every allegation therein contained, and the whole thereof, save and except paragraph one of plaintiff's complaint, and disclaims any

right, title, interest or estate in himself, in and to any of the waters of said Buffalo creek, mentioned in plaintiff's complaint, other than the fact that he is the manager of defendant Campion Mining & Trading Company, a corporation, and a stockholder thereof.

WILLIAM A. GILMORE,
Attorney for Defendant.

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn, deposes and says: That he is the attorney for said defendant in the above-entitled action, and as such states that he prepared the above and foregoing answer, and is familiar with the contents thereof, and believes the same to be true.

That he makes this verification for said defendant, for the reason that said defendant is now without the District of Alaska, and without the jurisdiction of the above-entitled court.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 4th day of April, 1905.

[Seal]

J. W. ALBRIGHT,

Notary Public in and for the District of Alaska.

Rec'd. copy of above answer this 4th day of April, 1905.

Atty. for Plff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome,

Alaska. Apr. 5, 1905. Geo. V. Borchsenius, Clerk.
By Angus McBride, Deputy Clerk. L. [15]

*In the United States District Court in and for the
District of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Reply.

Comes now, the plaintiff in the above-entitled
cause and for reply to the affirmative answer of the
defendants herein,

1.

Denies all and singular each and every allegation
contained in paragraphs numbered 5, 6, 7, 8 and 9 of
said affirmative answer and defense.

And for reply to defendants' second and further
answer to plaintiff's complaint, plaintiff

1.

Denies all and singular each and every allegation
contained in paragraphs numbered 5, 6 and 7 of said
further, second and affirmative answer to plaintiff's
complaint.

As a further, separate and affirmative reply to de-
fendants' affirmative answer to plaintiff's complaint,
and defendants' further, second and affirmative
answer to plaintiff's complaint, plaintiff alleges:

1.

That ever since the discovery of gold in the Cape Nome Mining District, District of Alaska, in the year 1898, there has been and now is a rule, regulation, custom and local law with reference to the location and appropriation of water for mining or other purposes in said district, under and by virtue of which said local law, regulation, [16] rule and custom it was and is necessary as part of the act of location and appropriation for the locator and appropriator of said water and water right to file, within a reasonable time, in the recorder's office for the mining district within which said right is situate, a record notice of his location and appropriation of said water or water right, and this said local law, regulation, rule and custom has always been and is now generally recognized and acknowledged, and has always been and now is universally followed and adhered to by all persons in said mining district.

2.

That by the provisions of the aforesaid local law, rule, regulation and custom, a person failing to comply with the requirements of the aforesaid regulation, rule, local law and custom in relation to recording as hereinbefore set out, loses and forfeits all and singular any right or rights to any water or water right by him attempted to be located or appropriated.

3.

That defendant and its predecessors in interest utterly failed and neglected to file for record any notice whatsoever or make or cause to be made any

record notice whatsoever of their alleged and pretended location and appropriation of the waters of Buffalo creek, in their said answer specified, prior to the — day of September, 1902.

4.

That long prior to the said defendant Campion Mining & Trading Company, its grantors or predecessors in interest, filing in the office of the recorder for the Cape Nome Mining District or the Cape Nome Recording District, District of Alaska, of any notice or certificate of location of any water right on Buffalo creek, and long prior to the said Campion Mining & Trading Company, or its grantors or predecessors in interest, making any record in the said office or offices claiming any of the waters of said Buffalo creek, the plaintiff [17] and its grantors and predecessors in interest had located and appropriated the waters of Nome river to the extent set forth in their complaint herein, and were proceeding with reasonable diligence to build and construct a ditch, flume and pipe-line to divert, operate and use the same for mining and other useful and beneficial purposes; which said ditch, flume and pipe-line was thereafter with reasonable diligence completed as in said complaint alleged.

WHEREFORE, plaintiff having replied to the answer of defendants prays judgment as prayed for in the complaint.

W. H. METSON,
IRA D. ORTON,
ALBERT FINK,
Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled action; that affiant has read over the foregoing reply and believes the same to be true; that the reason why this verification is made by affiant instead of an officer of plaintiff corporation is because said officers are not present within the District of Alaska, and for that reason are unable and incapable of verifying the same.

IRA D. ORTON.

Subscribed and sworn to before me this 5th day of June, 1905.

[Seal]

L. F. THOMAS,

Notary Public in and for the District of Alaska.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. June 5, 1905. Geo. V. Borchsenius, Clerk. By Jno. H. Dunn, Deputy Clerk. [18]

*In the United States District Court for the District
of Alaska, Second Division.*

No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Amended Answer of Campion Mining & Trading Company.

Comes now the Campion Mining & Trading Company, a corporation, one of the defendants above-named, and for answer to the plaintiff's complaint, alleges as follows:

1.

Answering paragraph two of plaintiff's complaint, defendant alleges that it has no knowledge of the facts therein alleged and contained, and therefore upon information and belief denies each and every allegation therein contained.

2.

Answering paragraph four of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof.

3.

Answering paragraph five of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof.

4.

Answering paragraph six of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof, excepting what is hereinafter generally admitted in defendant's affirmative answer.

5.

Answering paragraphs seven, eight, nine and ten of plaintiff's [19] complaint, defendant denies each and every allegation therein contained, and the whole thereof.

And for an AFFIRMATIVE answer to plaintiff's complaint, defendant alleges:

1.

That the defendant, Campion Mining & Trading Company, a corporation, is now, and ever since the 6th day of March, 1903, has been a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and is now, and ever since said date has been engaged in business and authorized to do business in the District of Alaska.

2.

That by its Charter and Articles of Incorporation said defendant, Campion Mining & Trading Company, was and is authorized and empowered, among other things, to own and operate mines and mining property within the District of Alaska; to own, operate and hold water and water rights, and to build and control ditches, flumes and aqueducts, and to lay pipes and flumes for supplying its mines and mining property with water, and for the general use of the public, in said District of Alaska; and said defendant has ever since said 6th day of March, 1903, been continuously engaged in said business.

3.

That the defendant, Campion Mining & Trading Company, is now, and it and its grantors and predecessors in interest were, long prior to any attempted appropriation of the waters of Nome river or Buffalo creek, a tributary of said Nome river, on the part of the plaintiff, the owners in fee of all the mineral lands from the source to the mouth of said Buffalo creek, including the bed of said Buffalo creek

and three hundred thirty (330) feet from the center of said stream on either side thereof, in the Cape Nome Recording District, District of Alaska.

4.

That the grantors and predecessors in interest of said defendant, [20] at said time, entered upon the said ground, which was then unoccupied and unappropriated public lands of the United States of America, and located it, by definitely marking the exterior boundaries of each placer claim thereon with substantial monuments, and by posting a notice on each of said placer claims, said notice containing such a description of the claim with reference to natural objects and permanent monuments as would identify the same, the name of the claim, the date of location and the name of the locator; that at said time the said grantors and predecessors in interest of said defendant did make a discovery of gold upon each of said mining claims, and did, thereafter within ninety days of the time of making said discoveries, record a copy of each of the said notices in the office of the Recorder of the Cape Nome Recording District, District of Alaska.

5.

That the said ground above described is valuable only for the deposits of gold in the sands thereof.

6.

That the grantors and predecessors in interest of this answering defendant, did, by virtue of the acts above referred to, appropriate all the waters flowing in the channel of said Buffalo creek, as well as the

territory embraced within the boundaries of said placer locations.

7.

That the locators of said placer mining claims, did, thereafter, for a valuable consideration, transfer and convey the same to said defendant.

8.

That it will be impossible to work the said ground without a large quantity of water; and that all the waters of said Buffalo creek are necessary for mining the ground adjoining said creek, owned by this answering defendant and its grantors and predecessors in interest long prior to any attempted appropriation of the waters of said [21] Buffalo creek.

9.

That said defendant is now, and it and its grantors and predecessors in interest were, long prior to any attempted appropriation of the waters of Nome river on the part of the plaintiff, the owners in fee of all the lands from the mouth of Buffalo creek down Nome river for a distance of two miles, including the bed of said Nome river and three hundred thirty (330) feet on either side of the center thereof.

10.

That, on the 14th day of October, 1900, the grantors and predecessors in interest of said defendant, entered upon said ground above described, which was then unoccupied and unappropriated public lands of the United States of America, and located it, by definitely marking the exterior boundaries thereof with substantial monuments, and by posting a notice thereon, said notice containing such a description of

the claim with reference to natural objects and permanent monuments as would identify the same, the name of the claim, the date of the location and the name of the locator, and named said claim the "Any Old Thing" Placer Mining Claim; that at said time the said grantors did make a discovery of gold upon said claim; and did, thereafter, on the 18th day of October, 1900, cause said location notice to be recorded in the records of said Cape Nome Recording District, District of Alaska.

11.

That said grantors and predecessors in interest of this answering defendant, did, by virtue of the acts above referred to, appropriate all the waters flowing in the channel of said Nome river, as well as the territory embraced within the boundaries of said placer location.

12.

That the said locators of said placer mining claim did, thereafter, for a valuable consideration, transfer and convey the same to [22] said defendant.

13.

That the said ground above described is valuable only for the deposits of gold in the sands thereof.

14.

That it will be impossible to work the said ground without a large quantity of water; and that all the waters of said Nome river are necessary for mining the ground adjoining said river, owned by this answering defendant and its grantors and predecessors in interest long prior to any attempted appropri-

tion of the waters of said Nome river on the part of the plaintiff.

16.

That said defendant is the owner and entitled to the possession, and it and its grantors and predecessors in interest were, long prior to any attempted appropriation of the waters of Nome river on the part of the plaintiff, the owners in fee of that certain placer mining claim, situate on the right limit of Nome river, in the Cape Nome Recording District, District of Alaska, known as the "Mountain Star" claim, containing 160 acres.

17.

That the grantors and predecessors in interest of said defendant did, on the 14th day of July, 1902, enter upon said Mountain Star placer claim, which was then unoccupied and unappropriated public lands of the United States of America, and locate the same, by definitely marking the exterior boundaries thereof with substantial monuments, and by posting a notice thereon, which notice reads as follows:

"NOTICE OF LOCATION.

MOUNTAIN STAR PLACER MINING CLAIM.

(160 acres.)

NOTICE IS HEREBY GIVEN, that the undersigned, citizens of the United States, having complied with all the requirements of the Revised Statutes of the United States, and all local rules, customs and regulations, have this day located and claim the following described placer mining ground, together with all water and water rights thereon, to wit: [23]

30 *Wild Goose Mining and Trading Company*

Beginning at the initial point on the right bank of Nome river, identical with corner No. 4 of No. 1 below discovery on Divide creek; and running:

Thence north $78^{\circ} 45'$ west 1110.7 feet to corner No. 2;

Thence north $17^{\circ} 00'$ west 1100 feet to corner No. 3;

Thence north $9^{\circ} 40'$ west 575.3 feet to corner No. 4;

Thence north $11^{\circ} 30'$ west 1320 feet to corner No. 5;

Thence north $15^{\circ} 15'$ west 1427 feet to corner No. 6;

Thence north $19^{\circ} 00'$ west 731.9 feet to corner No. 7;

Thence north $16^{\circ} 00'$ west 1320 feet to corner No. 8;

Thence north $13^{\circ} 15'$ west 942.5 feet to corner No. 9;

Thence north $21^{\circ} 00'$ west 1320 feet to corner No. 10;

Thence north $82^{\circ} 50'$ west 660 feet to corner No. 11;

Thence south $16^{\circ} 12'$ east 7310.4 feet to corner No. 17;

Side stakes on every line every 1320 feet.

Thence south $39^{\circ} 00'$ east 2529.9 feet to corner No. 13;

Thence 660 feet to point of beginning, adjoining the Any Old Thing and Lucky Find claims, side lines of each being identical. (Local magnetic bearings.)

Located July 14, 1902. Surveyed July 30, 1902.

Named the 'MOUNTAIN STAR.' See map on file, together with copy of this location notice in the

records of the Cape Nome Recording District, District of Alaska.

J. C. THORN,
B. MALONE,
W. L. CAMPION,
A. JOHNSON,
BARNEY NIGGEMEYER,
CHARLIE NIGGEMEYER,
JOHN LeFEVRE,
J. B. CAMPION.

Witnesses:

E. F. LEWIS,
J. NAGLEY."

That at said time the said grantors did make a discovery of gold upon said claim, and did, thereafter, on the 8th day of October, 1902, record a copy of said notice in the office of the Recorder of said Cape Nome Mining District, District of Alaska.

18.

That said grantors and predecessors in interest of this answering defendant did, by virtue of the acts above referred to, appropriate all the waters flowing in the channel of said Nome river, as well as the territory within the boundaries of said placer location.

19.

That the said locators of said placer mining claim did, thereafter, for a valuable consideration, transfer and convey the same to said defendant.

20.

That the said ground above described is valuable

only for [24] the deposits of gold in the sands thereof.

21.

That it will be impossible to work the said ground without a large quantity of water; and that all the waters of said Nome river are necessary for mining the ground adjoining said river and included in said claim, owned by this defendant and its grantors and predecessors in interest long prior to any attempted appropriation of the waters of said Nome river on the part of the plaintiff.

22.

That said defendant used the waters of said Buffalo creek and Nome river for mining purposes upon the lands hereinbefore described long prior to any attempted appropriation of said waters on the part of the plaintiff.

And for a further, second and affirmative answer to the plaintiff's complaint, defendant alleges:

1.

Defendant repeats and reaffirms paragraphs 1 and 2 of its first affirmative answer as paragraphs 1 and 2 of this further, second and affirmative answer to plaintiff's complaint.

3.

That Nome and Snake rivers are, and were at all times herein mentioned, natural watercourses, having their source and head tributaries in the Sawtooth range of mountains, and sloping towards Bering Sea, being each approximately fifty miles in length, and running in the same general direction; and said rivers and their tributaries do now, and have at all

times herein mentioned, been flowing through the unsurveyed public lands of the United States.

That placer gold, in paying quantities, was discovered by the miners upon Snake and Nome rivers and their tributaries, in the fall of the year 1898, and thereafter during the year 1898, and in the subsequent years, several thousand persons in number, came into the country comprising the watersheds of said rivers, and located placer mining [25] claims embraced within the region aforesaid, cannot be profitably mined and operated except with a large volume of water under pressure, and it at once became, and now is the custom among the miners in said region, to divert the waters of the natural streams in said region, and to carry the same in ditches, flumes and pipe-lines, to be used in mining said placer ground; that by the customs of the miners in said region, and all other regions of the District of Alaska, it has become established that the persons making the prior location, appropriation and diversion of the unappropriated waters of a stream flowing through the region above described is entitled to the prior use of the same.

4.

That Deep Canyon creek, Buffalo creek, Divide creek and Dorothy creek, form the head tributaries of headwaters of said Nome river.

5.

That during the summer of 1900, defendant and its grantors and predecessors in interest, located and appropriated all of the waters flowing in said Buffalo creek, at a point on said creek about one

mile above the mouth thereof, and during said year 1900, built and constructed a dam on said creek and diverted all of the water flowing in the channel of said creek by means of a ditch commencing at said dam; that said water was located, appropriated and diverted for the purpose of being conveyed, carried and taken, by means of a ditch and pipe-line, to the placer mining ground above described, and there to be sold or "farmed" out to the miners in that locality for mining purposes; and also, to be used by the defendant and its predecessors in interest on said Dorothy creek and other creeks, in mining and hydraulicking mining ground owned and controlled by the defendant under the level of line of its said ditch.

6.

That the defendant and its grantors and predecessors in interest have ever since said year 1900, been engaged in constructing [26] and building their said ditch and pipe-line from said dam or intake on said Buffalo creek, and are now engaged in extending and completing the same for the purposes hereinbefore set forth, as diligently as possible, the weather and season of the year permitting, and that the carrying capacity of said ditch, when completed, will be far in excess of all the waters flowing in said Buffalo creek at the head or intake of said ditch.

7.

That the purposes for which said water was located, appropriated and diverted by the defendant, its grantors and predecessors in interest, as aforesaid, were and are reasonable, necessary, useful and not wasteful.

8.

That the location, appropriation and diversion of all of the waters of said Buffalo creek by the defendants, its grantors and predecessors in interest, was long prior in time and right to the alleged location, appropriation and diversion of the waters of Nome river by the plaintiff.

9.

That by reason of said location, appropriation and diversion above described, the defendant is now the owner and entitled to the possession and use of all of the waters flowing in said stream.

And for a further, third and affirmative answer to the plaintiff's complaint, defendant alleges:

1.

Defendant repeats and reaffirms paragraphs 1 and 2 of its first affirmative answer and paragraphs 3 and 4 of its second affirmative answer as paragraphs 1, 2, 3 and 4 of this further, third and affirmative answer to plaintiff's complaint.

5.

That said defendant is now, and it and its grantors and predecessors in interest were, at all the times mentioned in plaintiff's [27] complaint, the owners in fee of most all of the mineral ground on the headwaters of said Nome river, including the said Buffalo creek, Dorothy creek and Divide creek, and the ground on either side of and including the bed of Nome river between said Buffalo creek and Dorothy creek, and it and its grantors and predecessors in interest, have been in the continued and uninterrupted possession thereof, long prior to the

times hereinbefore mentioned. That the greater part of said placer mining ground above described lies below said Buffalo creek, and comprises an area of about 6,000 acres of mineral-bearing ground valuable for the native gold contained within the auriferous gravel thereof.

6.

That the defendant is the owner, by virtue of a prior location, appropriation and diversion, made by it and its grantors and predecessors in interest, of all of the waters of said Buffalo creek, to the extent of all the waters in said stream running in the channel of said stream; that said defendant and its grantors, long prior to the alleged location and appropriation of the plaintiff on said Nome river, mentioned in its complaint, had located, appropriated, diverted and used all the water running and flowing in said Buffalo creek at a point about one-fourth of a mile above its mouth, for mining purposes on Dorothy creek, and the placer ground on the limits of said Nome river.

That after locating, appropriating and diverting the waters of said Buffalo creek, the defendant and its grantors, as rapidly as possible, constructed from its intake on said Buffalo creek, a ditch and pipe-line through its said placer mining ground to said Dorothy creek, a distance of about eight miles; that during the construction of said ditch and pipe-line, defendant conducted mining operations on its placer ground on the right limit of Nome river, near Divide creek, using the waters of said Buffalo creek for hydraulicking.

That while so engaged and employed in said work the defendant, [28] by deed, granted the plaintiff an easement, or right of way, across its said placer ground, below the level and line of defendant's ditch, for the plaintiff to build what is known as the Nome River Extension of plaintiff's Hobson ditch; that plaintiff accepted said right of way and constructed said extension thereafter with full knowledge of defendant's ownership, control and prior right to all of said water of said Buffalo creek, and the other head tributaries of Nome river; that at the time of said grant, and long prior to the time plaintiff made any diversion, appropriation or use of any of the waters of said Nome river, and long prior to plaintiff's completion of said Nome river extension ditch, plaintiff assisted and aided the defendant in its construction of said Buffalo-Dorothy creek ditch and pipe-line, commonly known as the Campion lower ditch or Debris ditch.

That by virtue of said grant and by virtue of said acts of plaintiff, the plaintiff is now estopped from asserting any claim of title to any of the waters of said Buffalo creek in the possession, use and control of the defendant.

7.

That by reason of said location, appropriation, diversion and use of the waters of said Buffalo creek, as above set forth, the defendant is the owner and entitled to the possession of all of said water.

WHEREFORE, said defendant prays that the plaintiff take nothing by its complaint, and that said defendant be decreed to be the owner and entitled to

the possession of all the waters of said Buffalo creek; and that defendant have and recover its costs and disbursements herein.

WILLIAM A. GILMORE,
DUDLEY DU BOSE,
Attorneys for Defendant. [29]

United States of America,
District of Alaska,—ss.

B. Niggemeyer, being first duly sworn, upon oath, deposes and says: That he is the secretary of the Campion Mining & Trading Company, a corporation, the defendant in the above-entitled action; that he makes this verification on behalf of said defendant corporation; that he has read the foregoing amended answer and knows the contents thereof; and that the same is true, as he verily believes.

B. NIGGEMEYER.

Subscribed and sworn to before me, this 21st day of June, 1905.

[Seal] G. B. BRUBAKER,
Notary Public in and for the District of Alaska.

Received a copy of the above and foregoing amended complaint this 20th day of June, 1905.

IRA D. ORTON,
Of Attorneys for Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. June 21, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [30]

*In the United States District Court for the District
of Alaska, Second Division.*

No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

**Second Amended Answer of Campion Mining &
Trading Co.**

Comes now, the Campion Mining & Trading Company, a corporation, one of the defendants above named, and for answer to the plaintiff's complaint, alleges as follows:

1.

Answering paragraph two of plaintiff's complaint, defendant alleges that it has no knowledge of the facts therein alleged and contained, and therefore upon information and belief denies each and every allegation therein contained.

2.

Answering paragraph four of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof.

3.

Answering paragraph five of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof.

4.

Answering paragraph six of plaintiff's complaint, defendant denies each and every allegation therein contained, and the whole thereof, excepting what is hereinafter generally admitted in defendant's affirmative answer.

5.

Answering paragraphs seven, eight, nine and ten of plaintiff's [31] complaint, defendant denies each and every allegation therein contained, and the whole thereof.

And for an affirmative answer to plaintiff's complaint, defendant alleges:

1.

That the defendant, *Campion Mining & Trading Company*, a corporation, is now, and ever since the 6th day of March, 1903, has been a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and is now, and ever since said date has been engaged in business and authorized to do business in the District of Alaska.

2.

That by its Charter and Articles of Incorporation said defendant, *Campion Mining & Trading Company*, was and is authorized and empowered, among other things, to own and operate mines and mining property within the District of Alaska; to own, operate and hold water rights, and to build and control ditches, flumes and aqueducts, and to lay pipes and flumes for supplying its mines and mining property with water, and for the general use of the public, in said District of Alaska; and said defendant has

ever since said 6th day of March, 1903, been continuously engaged in said business.

3.

That the defendant, *Campion Mining & Trading Company*, is now, and it and its grantors and predecessors in interest were, long prior to any attempted appropriation of the waters of Nome river or Buffalo creek, a tributary of said Nome river, on the part of the plaintiff, were the owners and in the exclusive possession of all the mineral lands from the source to the mouth of said Buffalo creek, including the bed of said Buffalo creek and three hundred thirty (330) feet from the center of said stream on either side thereof, in the Cape Nome Recording District, District of Alaska. [32]

That the grantors and predecessors in interest of said defendant, at said time, entered upon the said ground, which was then unoccupied and unappropriated public lands of the United States of America, and located it, by definitely marking the exterior boundaries of each placer claim thereon with substantial monuments, and by posting a notice on each of the said placer claims, said notice containing such a description of the claim with reference to natural objects and permanent monuments as would identify the same, the name of the claim, the date of the location and the name of the locator; that at said time the said grantors and predecessors in interest of said defendant did make a discovery of gold upon each of said mining claims, and did, thereafter, within ninety days of the time of making said discoveries, record a copy of each of the said notices in the office of the

Recorder of the Cape Nome Recording District, District of Alaska.

5.

That the said ground above described is valuable only for the deposits of gold in the sands thereof.

6.

That the grantors and predecessors in interest of this answering defendant, did, by virtue of the acts above referred to, appropriate all the waters flowing in the channel of said Buffalo creek, as well as the territory embraced within the boundaries of said placer locations.

7.

That the locators of said placer mining claims did, thereafter, for a valuable consideration, transfer and convey the same to said defendant.

8.

That it will be impossible to work the said ground without a large quantity of water; and that all the waters of said Buffalo creek are necessary for mining the ground adjoining said creek, owned by this answering defendant and its grantors and predecessors in interest long prior to any attempted appropriation of the waters of said Buffalo creek on the part of the plaintiff. [33]

9.

That, on the 14th day of October, 1900, P. F. Cummings, A. S. Kepner, Daniel Mahoney, Thomas Berry, R. J. Hanford, H. Buttel, Andrew Paul and R. J. Preston, entered upon that certain piece of ground hereinafter described, which said ground was then unoccupied and unappropriated public min-

eral lands of the United States, and located the same for placer mining purposes, by definitely marking the exterior boundaries thereof and posting a notice thereon, which said notice contained such a description of said ground with reference to natural objects and permanent monuments as would readily identify the same, the name of said claim, to wit, the "Any Old Thing" placer mining claim, the date of the location and the names of the locators; that at said time the said locators made a discovery of gold within the exterior boundaries of said claim, and did, thereafter, to wit, on the 18th day of October, 1900, cause a true and correct copy of said location notice to be recorded in the office of the recorder of the Cape Nome Recording District, District of Alaska.

10.

That the said placer mining claim "Any Old Thing" embraced all the land from the confluence of Buffalo creek and Nome river down the said Nome river for a distance of about two miles, including the bed of said Nome river and three hundred and thirty feet on each side thereof from the center of the stream, and is situated in the Cape Nome Recording District, District of Alaska.

11.

That the said locators did, by virtue of the acts above referred to, appropriate all the waters flowing in the channel of the said Nome river, as well as the territory embraced within the boundaries of said placer mining location.

12.

That the said locators of said placer mining claim

“Any Old Thing” did thereafter, to wit, on the 19th day of October, 1900, for a valuable consideration, make an oral contract with one, T. A. Campion, [34] to convey and transfer the said placer mining claim “Any Old Thing” to the said T. A. Campion.

13.

That immediately thereafter the said locators attempted to convey the said placer mining claim to said T. A. Campion by a writing, which through the ignorance of both said locators and said T. A. Campion failed to convey the legal title to said T. A. Campion; that at that time the said T. A. Campion paid to the said locators the sum of Eighty (\$80.00) Dollars lawful money of the United States, that being the full amount agreed upon between the said T. A. Campion and said locators as the purchase price of the said mining claim known as “Any Old Thing”; that the payment by the said T. A. Campion of the said Eighty (\$80.00) Dollars to the said locators was the sole and only condition to be performed by the said T. A. Campion.

14.

That immediately upon the payment of said money, the said T. A. Campion went into the exclusive occupation and possession of the said placer mining claim, as marked upon the ground by the said locators, and remained in possession of the same continuously and exclusively until the 15th day of April, 1903, when the said T. A. Campion, for a valuable consideration, conveyed by deed to this answering defendant all his right, title and interest in and to said “Any Old Thing” placer mining claim.

15.

That immediately upon the conveyance by the said T. A. Campion to this answering defendant of the said "Any Old Thing" placer mining claim, this answering defendant went into the actual occupation and possession of said claim, and ever since said time has remained, and now is in the actual occupation and possession of said placer mining claim; that the possession and occupation of said placer mining claim on the part of said T. A. Campion and this answering defendant was exclusive from said 18th day of October, 1900, to the 19th day of August, 1903, save and except the unlawful entry upon a portion of the [35] said claim by the plaintiff and one R. M. B. Tidd.

16.

That, on the 19th day of August, 1903, this answering defendant, for a valuable consideration, gave to the plaintiff a right of way for a ditch over the said placer mining claim known as "Any Old Thing," being a right of way from a point about a quarter of a mile below Buffalo creek on the right limit of said Nome river to the west side line of said claim.

17.

That from the said 19th day of August, 1903, this answering defendant has been in the exclusive and actual occupation and possession of said placer mining claim, save and except so much of the same as was granted to the plaintiff for a right of way, as set forth in paragraph 16 of this first affirmative defense.

18.

That the said ground above described as the "Any Old Thing" placer mining claim is valuable only for the deposits of gold in the sands thereof.

19.

That it will be impossible to work the said ground without a large quantity of water; and that all the waters of said Nome river are necessary for mining the same.

And for a further, second and affirmative answer to the plaintiff's complaint, defendant alleges:

Defendant repeats and reaffirms paragraphs 1 and 2 of its first affirmative answer as paragraphs 1 and 2 of this further, second and affirmative answer to plaintiff's complaint.

3.

That Nome and Snake rivers are, and were at all times herein mentioned, natural watercourses, having their source and head tributaries in the Sawtooth Range of mountains, and sloping towards Bering Sea, being each approximately fifty miles in length, and running in [36] the same general direction, and both of said rivers emptying into said Bering Sea.

That placer gold, in paying quantities, was discovered by the miners upon Snake and Nome rivers and their tributaries, in the fall of the year, 1898, and thereafter during the year 1898, and in the subsequent years, several thousand persons in number came into the country comprising the watersheds of said rivers, and located placer mining claims and engaged in mining the same; that most of said placer

mining claims embraced within the region aforesaid, cannot be profitably mined and operated except with a large volume of water under pressure, and it at once became, and now is, the custom among the miners in said region, to divert the waters of the natural streams in said region, and to carry the same in ditches, flumes and pipe-lines, to be used in mining said placer ground; that by the customs of the miners in said region, and all other regions of the District of Alaska, it has become established that the person making the prior location, appropriation and diversion of the unappropriated waters of a stream flowing through the public domain is entitled to the prior use of the same.

4.

That Deep Canyon creek, Buffalo creek, Divide creek and Dorothy creek form the head tributaries of the headwaters of said Nome creek.

5.

That during the summer of 1900, defendant and its grantors and predecessors in interest located and appropriated all of the waters flowing in said Buffalo creek, at a point on said creek about one mile above the mouth thereof, and during said year 1900, built and constructed a dam on said creek, and diverted all of the water flowing in the channel of said creek by means of a ditch commencing at said dam; that said water was located, appropriated and diverted for the purpose of being conveyed, carried and taken, by means of a ditch and pipe-line, to the placer mining ground above described, and there to [37] be sold or "farmed" out to the miners in that locality

for mining purposes; and also, to be used by the defendant and its predecessors in interest on said Dorothy creek and other creeks, in mining and hydraulicking mining ground owned and controlled by the defendant under the level of the line of its said ditch.

6.

That the defendant and its grantors and predecessors in interest have ever since said year 1900 been engaged in constructing and building their said ditch and pipe-line from said dam or intake on said Buffalo creek, and are now engaged in extending and completing the same for the purposes hereinbefore set forth, as diligently as possible, the weather and season of the year permitting, and that the carrying capacity of said ditch, when completed, will be far in excess of all the waters flowing in said Buffalo creek at the head or intake of said ditch.

7.

That the purposes for which said water was located, appropriated and diverted by the defendants, its grantors and predecessors in interest, as aforesaid, were and are reasonable, necessary, useful and not wasteful.

8.

That the location, appropriation and diversion of all of the waters of said Buffalo creek by the defendants, its grantors and predecessors in interest, was long prior in time and right to the alleged location, appropriation and diversion of the waters of Nome river by the plaintiff.

9.

That by reason of said location, appropriation and diversion above described, the defendant is now the owner and entitled to the possession and use of all the waters flowing in said stream. [38]

And for a further, third and affirmative answer to the plaintiff's complaint, defendant alleges:

1.

Defendant repeats and reaffirms paragraphs 1 and 2 of its first affirmative answer and paragraphs 3 and 4 of its second affirmative answer as paragraphs 1, 2, 3 and 4 of this further, third and affirmative answer to plaintiff's complaint.

5.

That said defendant is now, and it and its grantors and predecessors in interest were, at all the times mentioned in plaintiff's complaint, the owners of most all of the mineral ground on the headwaters of said Nome river, including the said Buffalo creek, Dorothy creek and Divide creek, and the ground on either side of and including the bed of Nome river between said Buffalo creek and Dorothy creek, and it and its grantors and predecessors in interest have been in the continued and uninterrupted possession thereof long prior to the times hereinbefore mentioned. That the greater part of said placer mining ground above described lies below said Buffalo creek, and comprises an area of about 6,000 acres of mineral-bearing ground valuable for the native gold contained within the auriferous gravel thereof.

6.

That the defendant is the owner, by virtue of a

prior location, appropriation and diversion, made by it and its grantors of all of the waters of said Buffalo creek, to the extent of all the waters in said stream running in the channel of said stream; that said defendant and its grantors, long prior to the alleged location and appropriation of the plaintiff on said Nome river, mentioned in its complaint had located, appropriated, diverted and used all the water running and flowing in said Buffalo creek at a point about one-fourth of a mile above its mouth, for mining purposes on Dorothy creek, and the placer ground on the limits of said Nome river.

That after locating, appropriating and diverting the waters [39] of said Buffalo creek, the defendant and its grantors, as rapidly as possible, constructed from its intake on said Buffalo creek a ditch and pipe-line through its said placer mining ground to said Dorothy creek, a distance of about eight miles; that during the construction of said ditch and pipe-line, defendant conducted mining operations on its placer ground on the right limit of Nome river, near Divide creek, using the waters of said Buffalo creek for hydraulicking.

That while so engaged and employed in said work the defendant, by deed, granted the plaintiff an easement, or right of way, across its said placer ground, below the level and line of defendant's ditch, for the plaintiff to build what is known as the Nome river extension of plaintiff's Hobson ditch; that plaintiff accepted said right of way and constructed said extension thereafter with full knowledge of defendant's ownership and control and prior right to all of

said water of said Buffalo creek, and the other head tributaries of Nome river; that at the time of said grant, and long prior to the time plaintiff made any diversion, appropriation or use of any of the waters of said Nome river, and long prior to plaintiff's completion of said Nome river extension ditch, plaintiff assisted and aided the defendant in its construction of said Buffalo-Dorothy creek ditch and pipeline, commonly known as the Campion lower ditch or Debris ditch.

That by virtue of said grant and by virtue of said acts of plaintiff, the plaintiff is now estopped from asserting any claim of title to any of the waters of said Buffalo creek in the possession, use and control of the defendant.

7.

That by reason of said location, appropriation, diversion and use of the waters of said Buffalo creek, as above set forth, the defendant is the owner and entitled to the possession of all of said water.

WHEREFORE, said defendant prays that the plaintiff take nothing by its complaint, and that said defendant be decreed to be [40] the owner and entitled to the possession of all the waters of said Buffalo creek; and that defendant have and recover its costs and disbursements herein.

WILLIAM A. GILMORE,

DUDLEY DU BOSE,

Attorneys for Defendant.

United States of America,
District of Alaska,—ss.

B. Niggemeyer, being first duly sworn, on oath, de-

poses and says: That he is the secretary of the Cam-
pion Mining & Trading Company, a corporation, the
answering defendant in the above-entitled action;
that he makes this verification on behalf of said de-
fendant corporation; that he has read the foregoing
second amended answer and knows the contents
thereof, and that the same is true, as he verily be-
lieves.

B. NIGGEMEYER.

Subscribed and sworn to before me, this 3d day of
July, 1905.

[Seal]

GEO. V. BORCHSENIUS.

Clerk U. S. Dist. Court, Alaska, 2d Division.

By Angus McBride,

Deputy Clerk.

Service admitted at Nome, Alaska, this 3d day of
July, A. D. 1905, by receiving a copy of this second
amended answer, certified to as correct by William
A. Gilmore of counsel for defendant.

S. D. WOODS,

ALBERT FINK,

IRA D. ORTON,

W. H. METSON,

JOS. K. WOOD,

J. H. TAM,

Of Counsel for Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the
U. S. Dist. Court, Alaska, Second Division, at Nome,
Alaska: July 3, 1905. Geo. V. Borchsenius, Clerk.
By Angus McBride, Deputy Clerk. [41]

*In the United States District Court in and for the
District of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

**Reply [to Second Amended Answer of Campion
Mining & Trading Company].**

Comes now the plaintiff in the above-entitled action, and for reply to the second amended answer of the defendant Campion Mining & Trading Company, a corporation, alleges and denies as follows, to wit:

1.

For reply to the affirmative answer to plaintiff's complaint first set forth in said second amended answer, the plaintiff denies that the defendant, Campion Mining & Trading Company, has ever been engaged in the business of supplying water for the general use of the public in the District of Alaska.

2.

Further replying to said affirmative answer to plaintiff's complaint first set forth in said second amended answer, plaintiff denies each and every allegation of paragraphs 3 to 19, inclusive, of said affirmative answer to plaintiff's complaint first set forth in said second amended answer of the defendant Campion Mining & Trading Company.

3.

Replying to the further, second and affirmative

answer to plaintiff's complaint, set forth in the second amended answer of the defendant *Campion Mining & Trading Company*, plaintiff denies each and every allegation of paragraphs 5, 6, 7, 8 and 9 of said further, second and affirmative answer to plaintiff's complaint.

4.

And for reply to the further, third and affirmative answer to [42] plaintiff's complaint contained in the second amended answer of the defendant *Campion Mining & Trading Company*, the plaintiff denies each and every allegation of paragraphs 5, 6 and 7 of said further, third and affirmative answer to plaintiff's complaint.

And as a further, separate and affirmative reply to said second amended answer and to the "affirmative answer" to plaintiff's complaint, set forth in the second amended answer of the defendant, *Campion Mining & Trading Company*, and, also, as a further, separate and affirmative reply to the further, second and affirmative answer to plaintiff's complaint, alleged and set forth in the second amended answer of the defendant, *Campion Mining & Trading Company*, and, also, as a further, separate and affirmative reply to the further, third and affirmative answer to plaintiff's complaint, alleged and set forth in the second amended answer of the defendant, *Campion Mining & Trading Company*, plaintiff alleges:

1.

That ever since the discovery of gold in the Cape Nome Mining District, District of Alaska, in the year 1898, there has been and now is a local law, regu-

lation and rule and custom, with reference to the location and appropriation of water for mining or other purposes in said district, under and by virtue of which said local law, regulation, rule and custom it was and is necessary, as part of the act of location and appropriation, for the locator or appropriator of said water and water right to file, within a reasonable time, in the recorder's office for the mining district wherein which said water and water right is situated a record notice of his location and appropriation of said water or water right, and this said local rule, law, regulation and custom has always been and is now generally recognized and acknowledged, and has been and has always been and now is universally followed and adhered to by all persons in said mining district.

2.

That by the provisions of the aforesaid local law, rule, regulation [43] and custom a person failing to comply with the aforesaid local law, rule, regulation and custom in relation to recording, as hereinbefore set out, loses and forfeits all and singular any right or rights to any water or water rights which may have been by him attempted to be located or appropriated.

3.

That the defendant and its predecessor in interest utterly failed and neglected to file for record, within a reasonable time, any notice of location whatever, or to make or cause to be made within a reasonable time, any record notice whatsoever of their alleged and pretended location and appropriation of the

waters of Buffalo creek, in their second amended answer specified, and said defendant and its predecessors in interest wholly failed and neglected to file for record, or to make or cause to be made any record notice whatsoever of their said alleged and pretended location and appropriation of said waters of Buffalo creek, until a time long subsequent to the location and appropriation of said waters by the plaintiff as in its complaint alleged.

4.

That long prior to the said defendant, *Campion Mining & Trading Company*, its grantors or predecessors in interest, filing in the office of the recorder for the Cape Nome Mining District, or the Cape Nome Recording District, District of Alaska, of any notice or certificate of location of any water right on Buffalo creek, and long prior to said *Campion Mining & Trading Company*, or its grantors or predecessors in interest, making or causing to be made any record in said office or offices, claiming any of the waters of said Buffalo creek, the plaintiff and its grantors and predecessors in interest had located and appropriated the waters of Nome river, to the extent set forth in their complaint herein, and were proceeding with reasonable diligence to build and construct a ditch, flume and pipe-line to divert and use the same for mining and other beneficial purposes; which said ditch, flume and pipe-line, was thereafter, with reasonable [44] diligence completed, as in its said complaint alleged. And said plaintiff and its grantors and predecessors in interest did, within a reasonable time, after their loca-

tion, of said waters of Nome river, file and record in the office of the Cape Nome Recording District, District of Alaska, within which said water is wholly situate, a record notice of the location of said water right and the location thereof as required by said local law, rule, regulation and custom.

And for a second, further, separate and affirmative reply unto the second amended answer of the defendant Campion Mining & Trading Company, plaintiff alleges as follows, to wit:

1.

That said defendant, the said Campion Mining & Trading Company, ought not in equity and good conscience to be allowed to deny the right of the plaintiff herein as alleged and set forth in its complaint, for the following reasons, to wit:

1. Because the grantors and predecessors in interest of the defendant did not object to the location of the water right of plaintiff made by its agent R. M. B. Tidd, on Nome river on the 7th day of June, 1902, upon certain lands claimed by the said grantors and predecessors of said defendant with knowledge acquired shortly subsequent thereto by them that the said location of said water right had been so made and that the notice thereof had been posted upon the said Nome river within the boundaries of the said land so claimed by the said defendant, its grantors and predecessors, and that the same had been recorded in the office of the Recorder of the Cape Nome Recording District, District of Alaska.

2. Because subsequent to said location as aforesaid, said defendant granted to said plaintiff a right

of way over the said lands so claimed as aforesaid for the ditch of the said plaintiff.

3. Because the grantors and predecessors of said defendant made statements to said plaintiff subsequent to the said location, that they did not claim any water right on said Nome river, adverse or in opposition or prior to said plaintiff. [45]

4. Because said defendant aided and assisted said plaintiff in constructing its ditch for the diversion of the waters of said Nome river so located as aforesaid.

5. Because said defendant at all times by its conduct led the plaintiff to believe that said plaintiff had as against the said defendant a prior right to the said waters of Nome river to the amount of three thousand inches the same being the amount claimed by said plaintiff in and by its notices of location thereof hereinbefore mentioned and set forth.

6. Because said defendant stood by and allowed and permitted the said plaintiff without objection and without assertion of any adverse prior right to said waters of Nome river, to the amount of said three thousand miner's inches, to expend large sums of money in the construction and completion of its entire works for the diversion of the said waters which said works have *been* at all times since the construction and completion thereof been used by the said plaintiff for the diversion of said waters and the conveyance thereof to the place where the *same* has been at all times by the said plaintiff put to a beneficial use, to wit, in carrying on its own mining operations and in the sale thereof to others for a like

purpose on their part.

7. Because the conduct and acts of said defendant at all times prior to its interference with the said plaintiff in the year 1904, should bar the said defendant from ever asserting any prior right to the said waters of Nome river to the amount of said three thousand miner's inches by virtue of any prior appropriation or diversion thereof or by virtue of any claim or right whatsoever, or by virtue of any appropriation or diversion of the waters of Buffalo creek, a tributary of Nome river.

And for a further and separate reply to the affirmative answer to plaintiff's complaint, first alleged and set forth in the second amended answer of the Campion Mining and Trading Company, plaintiff alleges:

1.

That the lands and premises mentioned in said affirmative [46] answer to plaintiff's complaint and alleged therein to have been located and appropriated as placer mining claims by the grantors and predecessors in interest of the defendant company, and alleged in said second amended answer to be situate on Nome river and Buffalo creek, and designated therein as the "Any Old Thing" and the "Hobo" Placer mining claims, containing one hundred and sixty acres each, or thereabouts and alleged to have been each located by eight persons, were never in fact located by eight persons, but by one P. F. Cummings, for the use and benefit of himself and T. A. Campion, and that said P. F. Cummings attempted to locate said placer mining claims known as and called

the "Any Old Thing" and the "Hobo," in the names of eight persons, without any authority whatever from said eight persons, and solely for his own use and benefit, and for the use and benefit of said T. A. Campion.

2.

That any conveyance or deed from said purported locators of said placer mining claims was made and executed without any consideration whatever, and in pursuance of an agreement and understanding between the alleged locators and the said P. F. Cummings, that they would convey said placer mining claims to any person whom said Cummings might designate, without any consideration whatever.

3.

That said alleged placer mining claims known as and called the "Any Old Thing" and the "Hobo" were not in fact located by eight persons, but were located by said Cummings in the names of eight persons, who had theretofore agreed, or whom said Cummings believed would transfer said claim to whomever he, the said Cummings, might name or designate, without consideration, for the sole purpose of attempting to procure and obtain one hundred and sixty acres tracts of placer mineral ground of the United States in one location, for his, Cummings, and the said T. A. Campion's use and benefit.

Wherefore, plaintiff having fully replied to the second amended answer of the defendant herein filed,

prays that it be dismissed [47] hence with its costs.

W. H. METSON,
ALBERT FINK,
J. K. WOOD,
IRA D. ORTON,
S. D. WOODS,
Attorneys for Plaintiff.

J. H. TAM,
Of Counsel.

United States of America,
District of Alaska,—ss.

W. L. Leland, being first duly sworn, on his oath deposes and says:

That he is the Secretary of the Miocene Ditch Company, a corporation, the plaintiff in the above-entitled action, and also the agent designated by said company upon whom service of process may be made in the District of Alaska; that he has read over the above and foregoing reply, knows the contents thereof and verily believes the same to be true.

W. L. LELAND.

Subscribed and sworn to before me, this 6th day of July, 1905.

[Seal] THOS. R. WHITE,
Notary Public, District of Alaska, at Nome, Alaska.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. July 6, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [48]

*In the United States District Court in and for the
District of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING &
TRADING COMPANY, a Corporation,
Defendants.

Supplemental Complaint.

Comes now the plaintiff in the above-entitled action, and by leave of the Court first had and obtained, files this, its supplemental complaint, and alleges and shows to the Court as follows:

1.

That since the commencement of this action, and on the 8th day of August, 1904, continuously up to and including the 29th day of September, 1904, and until 11 o'clock A. M. of the 30th day of September, 1904, the defendant Campion Mining & Trading Company, diverted the waters of Buffalo creek at a point above the dam and intake of plaintiff's Nome river ditch, and carried the said waters of said Buffalo creek around and away from the said plaintiff's Nome river ditch, and deprived the plaintiff of the use of the same as follows:

On the 9th day of August, 1904, 500 miner's inches of water;

On the 10th day of August, 1904, 500 miner's inches of water;

On the 11th day of August, 1904, 550 miner's inches of water;

On the 12th day of August, 1904, 750 miner's inches of water;

On the 13th day of August, 1904, 650 miner's inches of water;

On the 14th day of August, 1904, 500 miner's inches of water;

On the 15th day of August, 1904, 500 miner's inches of water;

On the 16th day of August, 1904, 600 miner's inches of water;

On the 17th day of August, 1904, 585 miner's inches of water;

On the 18th day of August, 1904, 368 miner's inches of water;

On the 19th day of August, 1904, 792 miner's inches of water;

On the 20th day of August, 1904, 900 miner's inches of water; [49]

On the 21st day of August, 1904, 140 miner's inches of water;

On the 22d day of August, 1904, 22 miner's inches of water;

On the 23d day of August, 1904, 22 miner's inches of water;

On the 24th day of August, 1904, 792 miner's inches of water;

On the 25th day of August, 1904, 140 miner's inches of water;

On the 26th day of August, 1904, 93 miner's inches of water;

On the 27th day of August, 1904, 323 miner's inches of water;

64 *Wild Goose Mining and Trading Company*

On the 28th day of August, 1904, 585 miner's inches of water;

On the 29th day of August, 1904, 792 miner's inches of water;

On the 30th day of August, 1904, 585 miner's inches of water;

On the 31st day of August, 1904, 140 miner's inches of water;

On the 1st day of September, 1904, 140 miner's inches of water;

On the 2d day of September, 1904, 198 miner's inches of water;

On the 3rd day of September, 1904, 690 miner's inches of water;

On the 4th day of September, 1904, 792 miner's inches of water;

On the 5th day of September, 1904, 940 miner's inches of water;

On the 6th day of September, 1904, 850 miner's inches of water;

On the 7th day of September, 1904, 900 miner's inches of water;

On the 8th day of September, 1904, 900 miner's inches of water;

On the 9th day of September, 1904, 792 miner's inches of water;

On the 10th day of September, 1904, 930 miner's inches of water;

On the 11th day of September, 1904, 998 miner's inches of water;

On the 12th day of September, 1904, 950 miner's inches of water;

- On the 13th day of September, 1904, 800 miner's inches of water;
- On the 14th day of September, 1904, 792 miner's inches of water;
- On the 15th day of September, 1904, 368 miner's inches of water;
- On the 16th day of September, 1904, 478 miner's inches of water;
- On the 17th day of September, 1904, 711 miner's inches of water;
- On the 18th day of September, 1904, 911 miner's inches of water;
- On the 19th day of September, 1904, 850 miner's inches of water;
- On the 20th day of September, 1904, 800 miner's inches of water;
- On the 21st day of September, 1904, 800 miner's inches of water;
- On the 22nd day of September, 1904, 800 miner's inches of water; [50]
- On the 23d day of September, 1904, 800 miner's inches of water;
- On the 24th day of September, 1904, 800 miner's inches of water;
- On the 25th day of September, 1904, 800 miner's inches of water;
- On the 26th day of September, 1904, 700 miner's inches of water;
- On the 27th day of September, 1904, 650 miner's inches of water;
- On the 28th day of September, 1904, 700 miner's inches of water;

On the 29th day of September, 1904, 750 miner's inches of water;

2.

That the amount of water aforesaid, for the days aforesaid, was taken by the said Campion Mining & Trading Company, out of said Buffalo Creek and carried around and below plaintiff's intake.

3.

That if said waters of said Buffalo creek had not been so diverted and carried around and below plaintiff's intake of its said Nome river ditch, by the defendant Campion Mining & Trading Company, the same would have flown down and through the plaintiff's said Nome river ditch, and would have been, by the plaintiff, put to a beneficial use; that the said plaintiff's Nome river ditch was not otherwise filled with water, and during all the dates aforesaid plaintiff's Nome river ditch would have carried the amount of water specified for each of said dates, in addition to the water obtained by plaintiff from other sources and carried in its said Nome river ditch.

4.

That during all of said times the plaintiff was the owner, by virtue of the prior location, appropriation, diversion and use, of the said water so diverted by the defendant, Campion Mining & Trading Company, and by it carried around and below plaintiff's said intake.

5.

That the value of said water was at said time One Dollar and Fifty Cents (\$1.50) per inch, per day.

6.

That by reason of said wrongful diversion of said water by [51] said Champion Mining & Trading Company, as herein alleged, plaintiff has been damaged in the sum of \$48,478.50.

WHEREFORE, plaintiff prays judgment against said defendants for the sum of \$48,478.50, and their costs and disbursements, in addition to the prayer in the original complaint.

W. H. METSON,
ALBERT FINK,
S. D. WOODS,
J. K. WOOD,
IRA D. ORTON,
Attorneys for Plaintiffs.

United States of America,
District of Alaska,—ss.

W. H. Metson, being first duly sworn, on his oath, deposes and says:

That he is the President of the plaintiff corporation, Miocene Ditch Company; that he has read the above and foregoing complaint, knows the contents thereof, and believes the same to be true.

W. H. METSON.

Subscribed and sworn to before me this 11th day of July, 1905.

[Seal]

ALBERT FINK,
Notary Public, District of Alaska, Residing at
Nome.

Service of a copy of the foregoing this 12th day of July, 1905, admitted.

D. DU BOSE,
Attorney for Defendant.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska, July 12, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [52]

*In the United States District Court for the District
of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, a Corporation,
Defendants.

Answer to Supplemental Complaint.

Comes now the Campion Mining & Trading Company, the answering defendant in the above-entitled cause, and for answer to the supplemental complaint of plaintiffs filed herein denies each and every material allegation, matter and thing set forth and alleged in paragraphs numbered one (1), two (2), three (3), four (4), five (5), and six (6) of said supplemental complaint, save and except that this answering defendant diverted the waters of Buffalo Creek.

DUDLEY DU BOSE,
WILLIAM A. GILMORE,
Attorneys for Defendant Campion Mining & Trading Company.

United States of America,
District of Alaska,—ss.

B. Niggemeyer, being first duly sworn, on my oath depose and say: That I am the secretary of the answering defendant in the above-entitled cause, the Campion Mining & Trading Company; that I have read the foregoing answer to supplemental complaint, and know the contents thereof, and that the same is true as I verily believe.

B. NIGGEMEYER.

Subscribed and sworn to before me, this 14th day of July, 1905.

[Seal]

THOS. R. WHITE,

Notary Public for the District of Alaska.

Due and legal service of the foregoing answer to supplemental complaint in the above-entitled cause and court is hereby admitted at Nome, Alaska, this 14th day of July, A. D. 1905.

ALBERT FINK,

Of Counsel for Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska, July 14, 1905. Geo. V. Borchsenius, Clerk.
By Angus McBride, Deputy Clerk. [53]

*In the United States District Court for the District
of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, Corporation,
Defendants.

Stipulation [for Amendment of Complaint].

IT IS HEREBY STIPULATED AND AGREED that the complaint of the plaintiff on file in the above-entitled action may be amended, and the same is hereby amended, by adding thereto after paragraph "X" thereof, the following allegations, the same being as and for second and third separate and distinct causes of action, to wit:

XI.

That plaintiff herein complains of the defendant the Campion Mining and Trading Company and for cause of action alleges:

1.

That it is now, and has been for a long time prior hereto, the owner of and in the possession of, and entitled to the possession of certain water locations and water rights, situated on the Grand Central River, in the Kougarok Mining District, District of Alaska, to the amount of 5,000 miner's inches thereof, and is the owner of the waters of said Grand Central river to the extent of said 5,000 inches.

2.

That said plaintiff is also the owner and in the possession and entitled to the possession of certain rights of way connected with said 5,000 miner's inches of water aforesaid, for the delivery of said waters in Nome river, above the present intake of said plaintiff's ditch on said Nome river.

3.

That the said defendant denies the right and title of the plaintiff, of, in and to, the said water, water locations, water [54] rights and rights of way, and claims the same adversely to said plaintiff, but that the said claim of the said defendant is without right.

XII.

That for a third, separate and distinct cause of action, plaintiff alleges:

I.

That it is now, and has been for a long time prior hereto, the owner of, and in the possession and entitled to the possession of certain water locations and water rights, situated on David creek, in the Cape Nome Mining and Recording District, District of Alaska, to the amount of 1,000 miner's inches thereof, and is the owner of the waters of said David creek to the extent of said 1,000 miner's inches.

II.

That said plaintiff is also the owner and in the possession and entitled to the possession of certain rights of way connected with said 1,000 miner's inches of water aforesaid, for the delivery of said waters in Nome river, above the present intake of said plaintiff's ditch on said Nome river.

III.

That the said defendant denies the right and title of the plaintiff, of, in and to the said water, water locations, water rights and rights of way, and claims the same adversely to said plaintiff, but that the said claim of the said defendant is without right.

And that the prayer of said complaint may be amended by adding thereto, the following:

That the right, title and interest of the said plaintiff, of, in and to the waters of the Grand Central river, in the Kougarak Mining District, and David creek, in the Cape Nome Mining and Recording District, District of Alaska, and of the rights of way connected therewith, and the possession thereof, be quieted as against the claims of the said defendant, and that the said defendant be enjoined and debarred from ever asserting any right, title or interest therein, or [55] to any part thereof, or to the possession thereof adversely to the plaintiff; and for such other and further relief as to the court may seem just and equitable in the premises.

Dated at Nome, Alaska, this 24th day of July, 1905.

W. H. METSON,

ALBERT FINK,

S. D. WOODS,

J. K. WOOD,

J. H. TAM,

Of Counsel,

Attorneys for Plaintiff.

W. A. GILMORE,

DUDLEY DU BOSE,

Attorneys for Defendant Campion Mining & Trading Co.

The verification of the above and foregoing stipulation is hereby expressly waived.

Dated, Nome, Alaska, July 24th, 1905.

W. A. GILMORE,
DUDLEY DU BOSE,

Attorneys for Defendant Campion Mining and Trading Co.

IT IS HEREBY ORDERED that the plaintiff's complaint be amended as above stipulated.

Dated July 25, 1905.

ALFRED S. MOORE,
Judge District Ct., Dis. of Alaska, Second Division.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. July 25, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [56]

*In the United States District Court for the District
of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
AND TRADING COMPANY, a Corporation,
Defendants.

Answer [to Amendment of Complaint.]

Comes now the defendant the Campion Mining and Trading Company, in the above-entitled action, and for answer to the amendment of the complaint of the

plaintiff on file herein, alleges and denies as follows, to wit:

1. Denies that the plaintiff is the owner or in possession, or entitled to the possession of any of the waters of said Grand Central River, or of said David creek, or of any rights of way connected therewith. On the contrary, defendant alleges that it is the owner of, in the possession of, and entitled to the possession of the said waters and water rights, locations and rights of way connected therewith, and that the claim of the said defendant is not without right, but that the same is founded upon a prior location and appropriation of the said waters, and the whole thereof, duly and regularly made according to law, and the customs of miners in the Kougarek Mining District, District of Alaska.

For a further separate and affirmative answer to said amendment to the complaint of plaintiff filed herein, said defendant alleges:

That on or about the — day of ———, 1903, a contract was made and entered into by and between the Campion Mining and Trading Company, T. A. Campion, and the Miocene Ditch Company, being the parties plaintiff and defendant herein, which said contract is in the words and figures as follows, to wit:

WHEREAS, the Campion Mining & Trading Company and T. A. Campion claim certain water rights on what is known as David creek [57] and the Grand Central River, and

WHEREAS, the Miocene Ditch Company also claim certain water rights on Grand Central River, and McLennan Creek and David Creek, and

WHEREAS, the said Champion Mining & Trading Company and the said T. A. Campion have given rights of way to said Miocene Ditch Company, and do hereby give, grant and convey rights of way to said Miocene Ditch Company, for the purpose of building a ditch or ditches from Nome River to Grand Central River and from Nome River to David Creek and beyond, and for flumes, pipes, waste gates, incidental to said ditch rights, and with the right to enter upon and excavate said ditch and ditches and to place said pipes, flumes and other incidents in position and keep the same in repair, said rights of way and rights to excavate covering as large a capacity as the said Miocene Ditch Company may determine, to carry through said ditches and pipe incident;

NOW, THEREFORE, it is agreed that if the said Miocene Ditch Company does build and complete said extension that when it does so build and complete the same, that it, the said Miocene Ditch Company, shall build, excavate and construct a ditch, pipe, flume and incidents of such a large capacity as will carry, free of charge, for said Champion Mining & Trading Company, and said T. A. Campion, jointly, from twelve hundred to two thousand inches of water, measured under four-inch pressure of the water and water rights owned, controlled and furnished by said Champion Mining & Trading Company and T. A. Campion and along the line of said ditch, flume and pipe as laid, excavated and constructed by it, said Miocene Ditch Company, between said Nome River and said David Creek and said Nome River and Grand Central River, all in the Nome Recording District, Dis-

trict of Alaska, all the said water to be used by said Campion and said Campion Mining & Trading Company exclusively by them, or either of them upon the mining locations and mining property now owned and held by them, or either of them along said Nome River and the creeks tributary thereof above Hobson Creek, the said water to go to said Campion and said Campion Mining & Trading Company is not to be let, farmed out, sold or encumbered in any way for [58] any other purpose than for use upon their own mining properties and locations or either of them, and the water carried and conveyed in said ditch to be delivered to said Campion Mining & Trading Company and said T. A. Campion, in no event, at no time, to exceed one-half of the water put therein or caused to be put therein by said mining and trading company or said Campion; the other one-half is to be the sole and exclusive property of said Miocene Ditch Company.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and caused their corporate names and individual names to be hereunto subscribed, this 19th day of August, 1903.

Signed, sealed and delivered in the presence of:

WHEREFORE, the said defendant, Campion Mining and Trading Company, prays that the said cause of action set forth in said amendment to said plaintiff's complaint on file herein, be dismissed and for its costs of suit.

W. A. GILMORE,
DUDLEY DU BOSE,

Attorneys for Said Defendant Campion Mining and Trading Company.

The verification of the foregoing answer is hereby especially waived.

Dated, Nome, Alaska, July 24th, 1905.

W. H. METSON,
IRA D. ORTON,
S. D. WOODS,
J. K. WOOD,
ALBERT FINK,

Attorneys for the Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. July 24, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [59]

*In the United States District Court in and for the
District of Alaska, Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, a Corporation,
Defendants.

Reply.

Comes now the plaintiff in the above-entitled action, and for reply unto the answer of the said defendant Campion Mining & Trading Company, a corporation, denies and alleges as follows, to wit:

1.

Denies all and singular each and every allegation contained in paragraph 1 of said answer, wherein it is alleged that the said defendant is the owner of, in the possession of and entitled to the possession of the said water, water rights, locations and rights of way connected therewith; that the claim of said defendant is not without right, but that the same is founded upon a prior location and appropriation of said waters and the whole thereof, duly and regularly made according to law and the customs of the miners in the Kougarok Mining & Recording District, District of Alaska.

2.

Admits that the said contract set forth in said answer was made and entered into as alleged in said answer, but that the same was made and entered into upon the representations made to said plaintiff by the said Campion Mining & Trading Company, and the said T. A. Campion, that they owned certain water rights on what is known as David creek and the Grand Central river, and that said contract was entered into upon the belief upon the part of said plaintiff that the said water rights so represented belonged to and were owned by the [60] Campion Mining & Trading Company and the said T. A.

Campion, but that since the said execution of said contract the said plaintiff has ascertained that said defendants above mentioned did not at said time, own any of said waters, water rights or locations, and do not now own the said waters, water rights or locations, and that by reason of that fact it will be impossible, on the part of said plaintiff, to carry out and keep the terms and conditions of said contract.

Plaintiff further alleges that it intends to and has made arrangements to build and construct ditches, canals, flumes and pipe-lines from the said Grand Central river and from said David creek to conduct and carry the waters thereon located, owned and appropriated by it to Nome river, and above its intake thereon, and that it will be inequitable to allow said defendants to have or participate in any right in said waters as in said contract agreed, or to be allowed to take any of said waters carried through said ditches, aqueducts or pipe-lines, as provided in said contract, unless said defendants be compelled by a decree of this Honorable Court to pay the equal one-half of all costs and expenses of the building, construction and maintenance of said ditches, canals, aqueducts and pipe-lines;

And that it be further decreed that said defendants be enjoined from using said ditches, canals, aqueducts and pipe-lines, or the water carried from the said Grand Central river and David creek, in any way whatsoever, unless they shall first advance the equal one-half, as soon as estimated of all costs of construction and maintenance thereof.

WHEREFORE, said plaintiff prays, in addition to

the prayer of its amended complaint, that in the decree to be entered in the above-entitled action it be provided:

That the said defendants be enjoined from using the said ditches, flumes, aqueducts and pipe-lines above mentioned and set forth, except upon the conditions mentioned and set forth; and for such other and further judgment, order and decree as to the court may seem just and equitable, besides its costs of suit.

W. H. METSON,
ALBERT FINK,
IRA D. ORTON,
S. D. WOODS,
J. K. WOOD,
Attorneys for Plaintiff.

J. H. TAM,
Of Counsel. [61]

The verification of the above and foregoing Reply is hereby especially waived and service admitted.

Dated July 24th, 1905, Nome, Alaska.

W. A. GILMORE,
DUDLEY DU BOSE,
Attorneys for said Defendants.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. July 25, 1905. Geo. V. Borchsenius, Clerk. By Angus McBride, Deputy Clerk. [62]

In the District Court for the District of Alaska, Second Division.

No. —.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, a Corporation,
Defendants.

Second Supplemental Complaint.

Comes now the plaintiff in the above-entitled action and by leave of Court first had and obtained, files this its second supplemental complaint, and alleges and shows as follows:

I.

That on the 8th day of August, 1904, the plaintiff commenced its action in this court against the defendants above named, by the service of a summons and copy of complaint upon said defendants; that the defendants duly appeared in said action; that said action was thereafter dismissed as against the defendant T. A. Campion; that the plaintiff thereafter filed amendments to its said original complaint, and also a supplemental complaint herein; that the defendant, the Campion Mining & Trading Company filed its answer and amended answer to said original complaint and its answer to said supplemental complaint.

II.

That since the filing of said answers by the

Campion Mining & Trading Company, said defendant has abandoned and forfeited the several mining claims and locations in said answers mentioned; and the plaintiff further alleges that if said defendant, or its predecessor in interest at any time located or appropriated any or all of the several waters, water rights, ditches and right of way for the same, in said answers mentioned, that the same and each of them have, since the commencement of said action, been forfeited and abandoned by said defendant, and the waters appropriated by the defendant, if any, [63] have not, for more than three years last past, been put to any beneficial use by said defendant, whether as in said answer alleged or otherwise.

III.

That the plaintiff hereby refers to and makes a part hereof as if the same were herein repeated and as a part of this supplemental complaint, the several complaints heretofore filed by it in this action, except so far as the facts therein alleged are modified by this supplemental complaint.

IV.

That the plaintiff, since the commencement of this action, has continued, during all mining seasons, to maintain, improve and enlarge its ditches mentioned in the original complaint, and increase the capacity thereof, and the flow of water therein, and used the said waters for the purposes and in the manner mentioned in its original complaint herein.

WHEREFORE, the plaintiff demands judgment

as in the original and first supplemental complaints amended.

G. J. LOMEN,
Attorney for Plaintiff.

District of Alaska,
Nome Precinct,—ss.

————— being first duly sworn, on oath says:

That he is the ————— for the plaintiff above named; that he has read the foregoing second supplemental complaint herein, and knows the contents thereof and that the same are true as he verily believes.

Sworn to before me this ——— day of April, 1912.

—————,
Notary Public in and for the District of Alaska.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. April 15, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [64]

—————
*In the District Court for the District of Alaska,
Second Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, a Corporation,
Defendants.

Answer to Second Supplemental Complaint.

The defendant, Campion Mining & Trading Company, a corporation, for answer to plaintiff's Second Supplemental Complaint—

1. Denies each and every allegation in paragraph II and the whole thereof.

2. Alleges that it has not sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph IV, and it therefore denies the same, and each and every allegation in said paragraph contained.

WHEREFORE, answering defendant prays that this action may be dismissed at the costs of plaintiff.

GEO. D. SCHOFIELD,

Atty. for Dft. Campion Mining & Trading Company.

Service accepted and verification waived.

G. J. LOMEN,

Atty. for Plaintiff.

[Endorsed]: Filed in the Office of the Clerk of the U. S. Dist. Court of Alaska, Second Division, at Nome. Apr. 16, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [65]

[Stipulation Re Testimony, etc.]

In the United States District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
& TRADING COMPANY, a Corporation,
Defendants.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled action that the testimony of witnesses heretofore taken in the above-entitled court at the former trial of said action may be by either party read, subject to all the legal objections and exceptions at the new trial of said action in said United States District Court for the District of Alaska, Second Division, or any continuance thereof whether the said witnesses or any of them be within the District at the time of the said new trial or any continuance thereof or absent therefrom; and that all the parties hereto may introduce at such new trial or any continuance thereof, further or other evidence, or the same or other witnesses, subject to all legal objections and exceptions as they may be advised; it being further understood that neither the plaintiff nor defendants shall be compelled to produce the witnesses who had testified on the previous trial.

IRA D. ORTON,

ALBERT FINK,

By W. H. METSON,

W. H. METSON,

Attorneys for Plaintiff.

GEORGE D. SCHOFIELD,

By WEST & DE JOURNAL,

Attorneys for Defendant.

[Endorsed]: Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. April 15, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [66]

[Minutes—October 30, 1911.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1911, Term, beginning February 1, 1911.

Monday, October 30, 1911, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

CAMPION M. & T. CO.

[Recital Re Withdrawal of Ira D. Orton, as Attorney.]

Upon application of Mr. Ira D. Orton it was ordered that the record show that he was no longer an attorney in the case. [67]

[Minutes—February 5, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning
February 5, 1912.

Monday, February 5, 1912, at 11 A. M.

Court convened at the hour of 11 A. M. pursuant to an order heretofore made and entered calling the General 1912 Term of Court.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

**[Recital Re Withdrawal of William A. Gilmore, as
Counsel for Defendants.]**

Upon motion of Mr. William A. Gilmore he was permitted to withdraw his name as attorney for defendants.

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION and CAMPION M. & T. CO.

The disposition of the foregoing cases was passed until Saturday next. [68]

[**Minutes—February 10, 1912.**]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning
February 5, 1912.

Saturday, February 10, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION and CAMPION M. & T. CO.

The foregoing cases were stricken from the equity trial calendar. [69]

[**Minutes—April 1, 1912.**]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Monday, April 1, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court, the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

This being the time fixed by the Court for the trial of this cause, upon agreement of the parties the trial thereof was continued until 10 A. M., Friday, April 5th, 1912. [70]

[Minutes—April 5, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Friday, April 5, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

In the absence of Judge Cornelius D. Murane, J. Allison Bruner, Deputy Clerk of the Court, adjourned Court until 10 A. M. Saturday, April 6, 1912. [71]

[Minutes—April 6, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, April 6, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

In the absence of Judge Cornelius D. Murane, J. Allison Bruner, Deputy Clerk of the Court, adjourned Court until 10 A. M. Saturday, April 13, 1912. [72]

[Minutes—April 13, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, April 13, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

[Memorandum Re Setting of Cases for Trial.]

Upon motion of Mr. G. J. Lomen, the trial of this cause was set for 10 A. M. Monday, April 15, 1912.

[73]

[Minutes—April 15, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Monday, April 15, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

[Minutes of Trial—April 15, 1912.]

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

This cause came on regularly for trial, Mr. G. J. Lomen appearing for the plaintiff and Mr. Geo. D. Schofield for the defendants.

Mr. G. J. Lomen presented a stipulation of the parties for the reading of the testimony given at the former trial, which stipulation was ordered filed.

Thereupon Mr. Lomen made a statement of the case for plaintiff. Mr. Lomen then offered in evidence for plaintiff the following described testimony

and exhibits, which were admitted in evidence without objection.

Upon consent of Mr. Geo. D. Schofield, attorney for the defendants, said testimony was admitted in evidence as found in the bill of exceptions, heretofore filed herein, reading thereof waived and submitted to the Court.

The testimony so admitted is described as follows:

Plaintiff offered in evidence the testimony of J. M. Davidson given upon direct examination as found on pages 1 to 17 inclusive and on page 28 of said bill of exceptions.

Also, blue-print map Nome and Snake Rivers filed and marked Plaintiff's Exhibit "A" at the former trial, and marked Exhibit "A" herein and refiled.

Also blue-print of Nome River and Buffalo Creek filed and marked Plaintiff's Exhibit "B" at the former trial, and marked Exhibit "B" herein and refiled.

Also Articles of Incorporation of Miocene Ditch Company filed and marked Plaintiff's Exhibit "C" at the former trial, and marked Exhibit "C" herein and refiled.

Also testimony of J. H. Montgomery, given upon direct examination and found upon pages 97, 98 and 99 of said bill of exceptions.

Also the testimony of R. M. B. Tidd, as given upon direct examination and found upon pages 111 to 119, inclusive, of said bill of exceptions.

Plaintiff then offered in evidence deed, R. M. B. Tidd to Miocene Ditch Co., dated June 9, 1902, marked Plaintiff's Exhibit "E" at the former trial,

and re-marked Plaintiff's Exhibit "E" herein and refiled.

Also the testimony of Ira D. Orton, given upon direct examination and found upon page 124 of said bill of exceptions.

Also the testimony of Charles D. McDermott, as given upon direct examination and found upon pages 128 and 129 of said bill of exceptions.

Also the testimony of C. S. Brooks, as given upon direct examination and found upon page 140 of said bill of exceptions.

Also, notice of water location, signed by R. M. B. Tidd, marked Plaintiff's Exhibit "F" and filed at the former trial hereof, and re-marked Plaintiff's Exhibit "F" and refiled. [74]

Also deed from Davidson, Leland, Bliss and Metson to Miocene Ditch Co., dated March 7, 1902, and marked Plaintiff's Exhibit "G" at the former trial hereof and re-marked Plaintiff's Exhibit "G" and refiled.

Also a deed from Davidson, Leland, Bliss and Metson to the Miocene Ditch Co., dated October 4, 1902, and marked Plaintiff's Exhibit "H" at the former trial hereof, and re-marked Plaintiff's Exhibit "H" and refiled.

Also the testimony of J. M. Davidson, as given upon direct examination and found upon pages 167 to 174, inclusive, of said bill of exceptions.

Also testimony of Fred Miller, as given upon direct examination and found upon pages 175 to 178, inclusive, of said bill of exceptions.

Also the testimony of Gus Anderson, as given upon

direct examination and found upon pages 183 to 187, inclusive, of said bill of exceptions.

Also the testimony of David H. Davidson, as given upon direct examination and found upon pages 191 to 199, inclusive, of said bill of exceptions.

Also testimony of Arthur D. Jett, as given upon direct examination and found upon pages 204 to 209, inclusive, of said bill of exceptions.

Also notice of location of the waters of Nome River in 1900 by C. S. Sinclair and W. A. Abernathy, marked Plaintiff's Exhibit "I" at the former trial, and re-marked Plaintiff's Exhibit "I" and refiled.

Also original deed Abernathy and Sinclair to Hammond, dated August 14, 1900, marked Plaintiff's Exhibit "J" at the former trial and re-marked Plaintiff's Exhibit "J" herein and refiled.

Also, original deed, Hammond to Miocene Ditch Co., dated April 9, 1903, attached to the deposition of I. B. Hammond, marked Exhibit "A" and marked at the former trial Plaintiff's Exhibit "K," and re-marked herein Plaintiff's Exhibit "K" and refiled.

Also testimony of A. G. Blake, as given upon direct examination and found upon page 225 of said bill of exceptions.

Also, admission by the defendant that the flume in the Miocene Ditch system below Hobson was constructed and will carry 6,000 miner's inches of water, found on the bottom of page 225 of said bill of exceptions.

Also testimony of G. M. Ashford, given upon di-

rect examination and found upon page 226 of said bill of exceptions.

Also, testimony of I. B. Hammond, as given upon direct examination and found upon pages 227 to 234, inclusive, of said bill of exceptions.

Also tracing marked Plaintiff's Exhibit "A" to the deposition of I. B. Hammond, found upon page 230 of said bill of exceptions.

Also letter Chord Bros. to Mr. Harry White, introduced in evidence at the former trial and marked Plaintiff's Exhibit "B-2" to the deposition of I. B. Hammond, copy thereof being found upon pages 233 and 234 of said bill of exceptions.

Also the testimony of W. G. Hoag, as given upon direct examination and found upon pages 244 to 246, inclusive, of said bill of exceptions.

Also the testimony of W. S. Bliss, as given upon direct examination and found upon pages 252 to 262, inclusive, of said bill of exceptions.

Also a statement of the amount of water from September 1 to 30, 1903, marked Plaintiff's Exhibit "L" at the former trial, and re-marked Plaintiff's Exhibit "L" herein and refiled.

Also the testimony of W. L. Leland, as given upon direct examination and found upon pages 274 to 283, inclusive, of said bill of exceptions.

Also location notice waters Hobson creek, dated August 2, 1901, marked Plaintiff's Exhibit "M" at the former trial hereof, [75] and re-marked Plaintiff's Exhibit "M" herein and refiled.

Also the testimony of T. M. Gibson, as given upon direct examination and found upon pages 298 and

299 of said bill of exceptions.

Also the testimony of J. T. Price, as given upon direct examination and found upon page 301 of said bill of exceptions.

Also the testimony of Jafet Lindeberg, as given upon direct examination and found upon pages 302 and 303 of said bill of exceptions.

Also the testimony of J. M. Davidson, as given upon redirect examination and found on page 304 of said bill of exceptions.

Also the testimony of W. S. Bliss, given upon redirect examination and found upon pages 305 and 306 of said bill of exceptions.

Also the testimony of T. M. Reed, as given upon direct examination and found upon pages 306 to 308 of said bill of exceptions.

Also, location notices, water rights, Volume 71, Nome Precinct, marked Exhibit "N" at the former trial hereof, and re-marked Plaintiff's Exhibit "N" herein and refiled.

Also the testimony of W. L. Leland, given upon redirect examination and found upon page 309 of said bill of exceptions.

Also the testimony of A. E. Southward, given upon direct examination and found upon pages 322 and 323 of said bill of exceptions.

Also the testimony of B. Deleray, given upon direct examination and found upon pages 324 and 328 of said bill of exceptions.

Also power of attorney, W. H. Metson to Ira D. Orton, dated April 20, 1900, marked Exhibit "O" at the former trial, and marked Exhibit "O" herein

and refiled; found on page 325 of said bill of exceptions.

Mr. G. J. Lomen thereupon asked leave of Court to file supplemental complaint. Permission was granted and plaintiff directed to file said supplemental complaint by to-morrow morning. [76]

[Minutes of Trial—April 16, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Tuesday, April 16, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

Upon motion of plaintiff's attorney Mr. G. J. Lomen, Plaintiff's Exhibit "A" offered in evidence yesterday, was permitted to be withdrawn and a blueprint showing Hobson and Glacier creek ditch systems marked Exhibit "D" at former trial substituted in lieu thereof, marked Exhibit "D" and refiled.

Answer to plaintiff's second supplemental complaint filed. F. R. Cowden, Art Gibson and H. O.

Winquist were each called, sworn and testified on behalf of plaintiff.

Plaintiff rests.

Thereupon Mr. Geo. D. Schofield, on behalf of defendant, moved the court for a nonsuit against plaintiff.

Motion taken under advisement by the Court.

Defendant rests.

Plaintiff rests.

Thereupon Mr. G. J. Lomen, on behalf of plaintiff, moved the Court for judgment as prayed for in its complaint and supplemental complaints. [77]

[Minutes—April 20, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, April 20, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had.

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

The Court rendered its decision herein, overruling defendant's demurrer to the evidence and denying

defendant's motion for a nonsuit.

Thereupon defendant announced that he would stand upon his demurrer to the evidence and motion for a nonsuit, and thereupon the Court ordered judgment for plaintiff as prayed for in its complaint and directed attorney for plaintiff to prepare and submit Findings of Fact and Conclusions of Law. [78]

[Minutes—April 27, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, April 27, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of Court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

The Court continued until Saturday next the signing of findings and decree herein. [79]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

BE IT FURTHER REMEMBERED, that thereafter the following proceedings were had in relation to said petition in intervention, as set forth in the minutes of the Court, in words and figures as follows:
[80]

In the District Court for the District of Alaska, Second Division.

No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

Petition in Intervention.

Now comes Wild Goose Mining & Trading Company, a corporation, and files this, its petition, for an order of intervention in the above-entitled cause, and as the grounds of its intervention alleges as follows:

1. Petitioner Wild Goose Mining & Trading Company is a corporation organized, existing and doing business as a corporation under the laws of the State of California.

2. The complaint in the above-entitled action was filed in the above-named court on the 8th day of August, 1904; thereafter such cause proceeded to trial before the court, sitting without a jury, and the same was submitted to the Court for its decision on July 13th, 1905. Messrs. W. H. Metson and Ira D. Orton appeared for the plaintiff, and William A. Gilmore and Dudley Du Bose, as attorneys for the defendants. In the month of July, 1905, the plaintiff dismissed the action as to the defendant T. A. Campion, and the Campion Mining & Trading Company is now the only party defendant to said action. During said month of July, 1905, and after said cause had been submitted to the Court for decision, and during the absence of Mr. Gilmore, leading attorney for the defendants, from the District of Alaska, a stipulation was entered into by Ira D. Orton as attorney for plaintiff, and Dudley Du Bose, one of the attorneys for the defendant, whereby an amended complaint was directed to be filed and an [81] answer thereto, and a reply to the answer, said answer purporting to be the answer of the defendant Campion Mining & Trading Company, and also stipulating as to the terms of the decision which should be made by the Judge, and thereafter on the 26th day of July, 1905, the sitting Judge, Hon. Alfred S. Moore, rendered his decision in the said cause, in accordance with said

stipulation, and the same was filed in the records of this cause.

Thereafter, and on the 4th day of September, 1905, the defendants by their attorneys, William A. Gilmore, C. S. Johnson, A. J. Daly and John J. Reagen, moved the Court to set aside said decree and strike from the files of the court said amended complaint and the answer and reply thereto, upon the ground and for the reasons that said amended pleadings, findings, conclusions of law and decree, signed and entered, were filed, signed and entered under a misapprehension by the Court, and that said defendant *Campion Mining & Trading Company*, had not consented to and authorized the same to be filed, signed and entered; that said pleadings, findings, conclusions and decree constituted a fraud upon the defendants, and were procured fraudulently.

Thereafter, after full hearing, said motion was submitted to the Court for decision, and on the 16th day of September, 1905, the Court made and entered its order, that the said stipulation and pleadings, consisting of the stipulation, complaint, answer and reply, be stricken from the records and files of the court, and that the said decree entered on the 26th day of July, 1905, together with the findings of fact, conclusions of law, be set aside, annulled, vacated and held for naught; and further ordering that the said cause be resubmitted to the Court for final decision under the pleadings and evidence in the cause as submitted on July 13, 1905.

Thereafter, such proceedings were had that an appeal was perfected by the said plaintiff, to the United

States Circuit Court [82] of Appeals for the 9th Circuit, from said order and decree of Sept. 16, 1905. Thereafter, such proceedings were had in said cause, that on the 29th day of September, 1905, the United States Circuit Court of Appeals issued under its seal, an alternative writ of certiorari, directed to the Hon. Alfred S. Moore and others, to review the proceedings of this Court, with relation to the setting aside of said stipulation, decision, findings and decree of July 26, 1905.

Thereafter, and on the —— day of ———, 190—, the said order of this Court of Sept. 16, 1905, was affirmed by the said Circuit Court of Appeals, and the cause remanded to the District Court of the District of Alaska, Second Division, for further proceedings, in accordance with said decision.

Thereafter, and on October 26, 1908, Hon. Alfred S. Moore, then Judge of said District Court, rendered a final opinion in favor of the defendant and against the plaintiff herein; and thereafter and on January 4, 1909, the Court filed its final decision dismissing the said action.

Thereafter an appeal was perfected by the plaintiff from said final decree, and the transcript on said appeal was mailed by the Clerk of the District Court for the Second Division, to the United States Circuit Court of Appeals, on or about January 18, 1911.

Thereafter, and on the 6th day of October, 1911, the said United States Circuit Court of Appeals reversed said judgment of the District Court, and by its mandate remanded said cause to the said District Court for a retrial; said order of reversal was made

upon the stipulation of attorneys for appellants and appellee, filed in said Circuit Court of Appeals on September 5, 1911; said mandate also ordered costs for the appellant, plaintiff herein, taxing the same at the sum of \$738.15. Said mandate was filed in the office of [83] the Clerk of the District Court herein on October 23, 1911.

3. Petitioner herein avers that at the date of filing said stipulation of reversal in said Circuit Court of Appeals on said September 5, 1911, and for a long time prior thereto, the plaintiff and defendant herein well knew that the Wild Goose Mining & Trading Company, petitioner herein, had succeeded by mesne conveyances to all the right, title and interest of the said Campion Mining & Trading Company, in and to the subject matter of the estate claimed by the plaintiff in this cause, and in and to the title and rights of the defendant.

Petitioner avers that said order of reversal in said Circuit Court of Appeals, of this cause, was procured by fraud and collusion between plaintiff and defendant, for the purpose of cheating and defrauding this petitioner, the Wild Goose Mining & Trading Company from its rights in the substance of the estate of the defendant, Campion Mining & Trading Company.

Petitioner further avers that said stipulation was filed in the said Circuit Court of Appeals, and said order of reversal was made without notice to your petitioner, and was so done with the intent to cheat and defraud your petitioner of all its rights in the subject matter of the estate involved in this action.

4. Petitioner further avers that during the pendency of this action, as aforesaid, and on or about the 13th day of August, 1906, three separate actions were commenced in the District Court for the Second Division of the District of Alaska, in two of which actions the Beau Mercantile Company, a corporation, was the plaintiff, and in one of which actions John L. Beau was the plaintiff, in all of which actions the Campion Mining & Trading Company was defendant, and attachments against the defendant Campion Mining & Trading Company were levied upon the property of said defendant Campion Mining & Trading Company in said actions, and thereafter such proceedings were had in this court that on the 2d day of July, 1907, final judgments [84] were rendered in each of said actions in favor of the plaintiffs therein, and against the Campion Mining & Trading Company, and on the 27th day of July, 1908, writs of execution were issued out of this court, directing and requiring Thomas Cader Powell, United States Marshal of said Second Division, to make the sums due on said judgments, with costs and accruing costs, out of the property attached by him in said actions, and thereafter the said United States Marshal did on the 28th day of August, 1908, sell at public auction all of the said real property theretofore attached by him in said causes, and the same was struck off and sold by said Marshal to John L. Beau in the case of John L. Beau against the Campion Mining & Trading Company, and in the two cases of Beau Mercantile Company, a corporation, to the plaintiff therein, the Beau Mercantile Company.

Thereafter, the said United States Marshal gave said John L. Beau and the said Beau Mercantile Company such certificates as are required by law directed to be given in such cases.

That thereafter, and on or about the 14th day of August, 1909, the said John L. Beau, and the said Beau Mercantile Company, duly assigned to one C. B. Greeley, all the right, title and interest of the said John L. Beau and the said Beau Mercantile Company, a corporation, in and to said certificates of sale and the real estate and other property mentioned therein, which said assignments were duly recorded in the United States Recorder's office for the Cape Nome Precinct, District of Alaska, in Vol. 183, pages 323 and 324 thereof.

Thereafter, and on the 9th day of September, 1908, upon due proceedings being had therein, an order was duly made and entered by the said United States District Court for the Second Division of the District of Alaska, confirming the sales of said real estate so sold on execution as aforesaid, and thereafter and on the 1st day of August, 1911, the said Thomas Cader Powell, United States Marshal, [85] as aforesaid, did make his deeds of all of said property to said C. B. Greeley, which said deeds were duly filed for record on September 18, 1911, in Book 191, pages 79, 81 and 82 of the records of the Cape Nome Recording Precinct. That the property there deeded by the said United States Marshal to said C. B. Greeley is described as follows:

That certain elevator, pipe, buildings, etc., at Dorothy creek; that certain ditch known as the Lower

Campion or Debris ditch, which has its intake at Buffalo creek, and all of the waters of Buffalo creek appropriated thereby; also all of the right, title and interest of the Campion Mining & Trading Company in and to those certain water rights on Buffalo creek. Also that certain ditch known as the High or Upper Campion ditch, which has its intake at Buffalo creek, and all of the waters appropriated thereby. Also all of the right, title and interest of the defendant Campion Mining & Trading Company in and to those certain water rights on Dorothy creek. Also all of the right, title and interest of the defendant Campion Mining & Trading Company in and to those certain water rights on Buffalo creek. All of said real estate and real property being situated in the Cape Nome Recording District, District of Alaska, Second Division, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

That thereafter, and on the — day of —, 190—, the said C. B. Greeley sold, assigned and transferred to your petitioner, Wild Goose Mining & Trading Company, all of his right, title and interest in and to the above described real estate and appurtenances, and your petitioner is now the owner of all of said real estate and appurtenances, and the same comprises the subject matter in litigation in this action.

5. That on the 9th day of September, 1909, a certain action was commenced in the above-named District Court by the filing of a [86] complaint therein, in which said action one F. R. Cowden was

plaintiff, and your petitioner and said C. B. Greeley and others were defendants. In the complaint in said action it was alleged that the United States Marshal's sales of the property above mentioned, upon execution of the Campion Mining & Trading Company, to John L. Beau and the Beau Mercantile Company, and the said assignments of certificates of sale, made to said C. B. Greeley as aforesaid, were fraudulent and void, and it was also alleged in said complaint that the said sales conveyed the substance of the estate of the said Campion Mining & Trading Company, in which said action George D. Schofield was the attorney for said plaintiff, F. R. Cowden.

Thereafter, on October 27, 1909, one Charles Woog by George D. Schofield, his attorney, filed a complaint of intervention in said action, and on January 14, 1910, Frank L. Blackman, for himself and as Receiver of the Campion Mining & Trading Company, filed an answer and cross-complaint in said action. The averments of the complaint in said action were reaffirmed by said complaint in intervention and said cross-complaint and the title of said C. B. Greeley, predecessor in interest of petitioner, to said property was attacked.

To the original complaint and to the complaint of intervention of said Charles Woog, and the answer and cross-complaint of the Campion Mining & Trading Company, the said Frank L. Blackman as its Receiver, said C. B. Greeley, with other defendants in said action, filed demurrers to said pleadings, on the ground that the said complaint did not state facts sufficient to constitute a cause of action against the

said C. B. Greeley or any of said defendants. Thereafter, said several demurrers were sustained by the Court, and the said complainants having elected in open court to stand upon their complaint, answer, cross-complaint and complaint in intervention, and refusing further to plead, the said complaint, answer, cross-complaint, and complaint in intervention, were dismissed, said judgment [87] of dismissal being dated at Nome, Alaska, August 1, 1911, and filed in the records of said cause in this court.

Thereafter, the said plaintiff, F. R. Cowden, cross-complainant Campion Mining & Trading Company, and intervenor Charles Woog, prayed that an appeal be allowed to the United States Circuit Court of Appeals for the 9th Circuit, from said judgment of dismissal, which said appeal was allowed October 28, 1911.

Thereafter, such proceedings were had that on October 30, 1911, a transcript on appeal from said judgment was transmitted by mail to the United States Circuit Court of Appeals for the 9th Circuit, by the Clerk of the said District Court, and the said appeal is still pending in said United States Circuit Court of Appeals.

Petitioner avers that in so far as this Court is concerned, with the said cause, and the subject matter in litigation in this cause, the issues determined therein are *res adjudicata* between the defendant Campion Mining & Trading Company and your petitioner.

6. Your petitioner avers that thereafter such proceedings were had in this cause, that on the 13th

day of April, 1912, and without notice to your petitioner, an order was made by this Court, ordering this cause to be tried on April 15, 1912; that on said April 15th, and without notice to your petitioner, and although the facts heretofore averred in this petition, were well known to the plaintiff and defendant herein, this cause was called for trial, G. J. Lomen, Esq., appearing as attorney for the plaintiff Miocene Ditch Company, and George D. Schofield, Esq., as attorney for Campion Mining & Trading Company, and a stipulation was filed without objection on the part of the defendant Campion Mining & Trading Company, or its attorney George D. Schofield, being as follows:

“IT IS HEREBY STIPULATED by and between the parties to the above-entitled action, that the testimony of the witnesses heretofore taken in the above-entitled court at the former trial of said [88] action may be, by either party, read, subject to all the legal objections and exceptions, at the new trial of said action, in said United States District Court for the District of Alaska, Second Division, or any continuance thereof, whether the said witnesses or any of them, be within the District at the time of the said new trial, or any continuance thereof, or absent therefrom, and that all the parties hereto may introduce at such new trial, or any continuance thereof, further or other evidence, or the same or other witnesses, subject to all legal objections and exceptions as they may be advised; it being further understood that neither the plaintiff nor defendants shall be compelled to produce the witnesses who have

testified on the previous trial.”

Said stipulation is not dated, and is signed Ira D. Orton and Albert Fink, by W. H. Metson, attorneys for plaintiff. George D. Schofield by West & De Journal, attorneys for defendants.

Petitioner avers that the above stipulation was made, entered and filed without notice to your petitioner, by plaintiff herein, Miocene Ditch Company, and defendant herein, Campion Mining & Trading Company, secretly, with the intent and purpose, collusively and fraudulently, to cheat and defraud your petitioner out of its rights in the subject matter of this action.

Petitioner further avers that said stipulation was not signed in person by either said G. J. Lomen or said George D. Schofield, as attorneys for the plaintiff and defendant herein, and the evident intention of the plaintiff and defendant was to fraudulently and collusively deny your intervenor the right of presenting to the court and defending in said action its rights to the subject matter of said action.

That thereupon the said Lomen offered all the testimony taken at the former trial on behalf of the plaintiff, which testimony was admitted by the court, without objection on the part of the defendant Campion Mining & Trading Company, or its said attorney, [89] George D. Schofield. That before adjournment of court on said April 15th, counsel for the plaintiff, Mr. Lomen, asked leave of Court to file a supplemental complaint in said action, alleging new and vital matter to the merits of said action, and permission was thereupon granted to file such sup-

plemental complaint without objection on the part of the said attorney for the defendant. That upon the convening of court for the further trial of said cause on April 16th, said supplemental complaint was filed, and immediately thereafter the defendant, by its said attorney, filed an answer in general terms, denying the averments set forth in said supplemental complaint, and immediately thereafter a reply to said supplemental answer was filed by the attorney for the plaintiff.

That thereafter and on the morning of said April 16th, further evidence was introduced on behalf of the plaintiff in support of the original allegations in the complaint in this action, and at least three witnesses were called on behalf of the plaintiff, as to the matters and things set forth in said supplemental complaint, of all of which your petitioner had no notice. Thereupon the plaintiff submitted its case. Thereupon the defendant *Campion Mining & Trading Company* introduced no evidence, either as provided for in said stipulation or to controvert the evidence introduced by plaintiff on behalf of the new issues raised by said supplemental complaint and the answer and reply thereto, and demurred to the evidence or asked for a nonsuit, upon the evidence and testimony then before the Court. Thereupon the Court took said demurrer or motion under advisement, and thereafter on April 20, 1912, the Court rendered its opinion, overruling and denying said demurrer or motion, and ordered findings and decree to be prepared in favor of the plaintiff and against the defendant, which said findings and decree have

not yet been signed by the Court, nor has the defendant Campion Mining & Trading Company offered any evidence to the Court on its behalf. [90]

7. Your petitioner avers that by reason of the marshal's sales and the said marshal's deeds, heretofore described, to said C. B. Greeley, and by the said assignments and transfer of all of the interests of said C. B. Greeley in and to the property described therein, to petitioner, it is now the owner and entitled to the possession of all the real property and appurtenances heretofore described, and further alleges that the same constitute the substance of the estate of the defendant Campion Mining & Trading Company now involved in this cause, and it is a necessary and proper party to this action, to the end that the rights of all parties may be fully adjudicated and justice done.

Petitioner further alleges that it and its predecessor in interest has been in the actual possession and use of all the property heretofore described, and which is the subject matter of litigation in this cause.

Petitioner further alleges that the allegations set forth in the supplemental complaint filed in this court on April 16, 1912, were and are wilfully and collusively false, and that if permitted to intervene in this action your petitioner will be able to prove conclusively that it and its predecessor in interest have so been in the possession and use of said property.

8. Your petitioner further avers that the record itself shows that the order of reversal of the judgment heretofore rendered in this court as aforesaid,

made by the said United States Circuit Court of Appeals on October 6, 1911, was procured by collusion and fraud on the part of the plaintiff, Miocene Ditch Company, and the defendant, Campion Mining & Trading Company, and was in fraud of plaintiff's rights in the premises.

WHEREFORE, your petitioner prays:

1. That the submission of this cause for decision so made as aforesaid on the 16th day of April, 1912, be set aside.

2. That your petitioner be allowed to intervene in this [91] action either by the filing of a complaint in intervention or being made a defendant in this action, with permission to file an answer therein, and that petitioner be given time to offer its evidence in support thereof.

3. For such other and further relief as may be meet and agreeable to equity.

ELWOOD BRUNER.

Attorney for Petitioner.

United States of America,
District of Alaska,—ss.

F. M. Ayer, being first duly sworn, deposes and says: That he is the manager and agent of the Wild Goose Mining & Trading Company, a corporation, named in the foregoing petition, and resides at Nome, Alaska; that there is no other officer of said Wild Goose Mining & Trading Company now in the District of Alaska; wherefore he makes this verification. That he has read the above and foregoing petition in intervention, knows the contents thereof, and that

the same is true as he verily believes.

F. M. AYER.

Subscribed and sworn to before me, this 3d day of May, 1912.

[Seal]

J. SULLIVAN,

Notary Public for Alaska, Residing in Nome.

Service of the foregoing petition in intervention is hereby admitted this 4th day of May, 1912.

G. J. LOMEN,

Attorney for Plaintiff.

GEO. D. SCHOFIELD,

Attorney for Defendant.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 4, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [92]

BE IT FURTHER REMEMBERED that thereafter plaintiff filed its Demurrer to said Petition as follows:

And that defendant, Campion Mining & Trading Company, filed its demurrer to said petition as follows: [93]

In the District Court for the District of Alaska, Second Division.

No. —.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING AND TRADING COMPANY, a Corporation,
Defendant.

Demurrer [to Petition in Intervention].

Now comes the plaintiff above named and demurs to and objects to the petition in intervention herein, on the part of the Wild Goose Mining and Trading Company, a corporation, on the ground and for the reason that it appears on the face of said petition that it does not state facts sufficient to entitle the said petitioner to intervene herein.

G. J. LOMEN,

Attorney for Plaintiff.

Due service of the within Demurrer is hereby accepted at Nome, Alaska, this 8th day of May, 1912.

ELWOOD BRUNER,

Attorney for Intervenor.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 8, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [94]

[Demurrer to Petition in Intervention.]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

Defendant demurs to the petition of the Wild Goose Mining & Trading Company, a corporation, filed herein and designated "Petition in Intervention," upon the following grounds:

1. Said petition does not state facts sufficient to constitute a cause of intervention.

2. That there is another action pending between the same parties (Wild Goose Mining & Trading Company and the Campion Mining & Trading Company) for the same cause, and is now on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, and this court has lost jurisdiction of the matters and things alleged and set forth in said pending action, which said matters and things are identical with the allegations set forth in the alleged petition of intervention filed herein.

GEO. D. SCHOFIELD,

Atty. for Defendant.

Service accepted May 7, 1912.

ELWOOD BRUNER,

Atty. for Wild Goose M. & T. Co.,

Petitioner.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, May 8, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. [95]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

BE IT FURTHER REMEMBERED, that certain proceedings were had herein, as shown by the minutes of the Court as follows: [96]

[Minutes—May 4, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, May 4, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge,
presiding.

Upon the convening of court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

Mr. Elwood Bruner, on behalf of the Wild Goose Mining & Trading Company presented and filed a

petition for leave to intervene; said petition was set for hearing on Wednesday, May 8, 1912, at 10 A. M.
[97]

[Minutes—May 8, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Wednesday, May 8, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

This being the hour set for hearing of petition of Wild Goose Mining & Trading Company for leave to intervene herein, Mr. Elwood Bruner appeared for the petitioner, Mr. G. J. Lomen for the plaintiff and Mr. Geo. D. Schofield for the defendant Campion Mining & Trading Company.

Mr. G. J. Lomen presented and filed demurrer to said petition on behalf of plaintiff,

Mr. Geo. D. Schofield presented and filed demurrer to said petition on behalf of defendant Campion Mining & Trading Company.

Argument was then had on said demurrers and said

petition by the respective attorneys, and said demurrers and said petition were submitted to the Court for its decision, petitioner being granted until Monday next in which to submit authorities in support of its petition. [98]

[Minutes—May 25, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, May 25, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

In this case the Court made the following order:

“The petition of the Wild Goose Mining & Trading Company, a corporation, for leave to intervene in this action by way of complaint or answer having been heretofore submitted to the Court,—

It is hereby ordered that said petition be, and the same is, denied.”

Petitioner was allowed an exception to said order.

Mr. Elwood Bruner, attorney for petitioner, there-

upon requested and was granted twenty days in which to prepare, serve and file a bill of exceptions.

Thereupon the Court signed and filed the Findings of Fact and Conclusions of Law and Decree heretofore submitted by the plaintiff.

Upon application of Mr. Geo. D. Schofield, attorney for the defendant Campion Mining & Trading Company, said defendant was granted sixty days stay of execution and sixty days in which to prepare, serve and file bill of exceptions. [99]

[Minutes—June 1, 1912.]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General, 1912, Term, beginning February 5, 1912.

Saturday, June 1, 1912, at 10 A. M.

Court convened pursuant to adjournment.

Hon. CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of court the following proceedings were had:

1176.

MIOCENE DITCH CO.

vs.

T. A. CAMPION et al.

Upon motion of Mr. Elwood Bruner, the Wild Goose Mining & Trading Company, petitioner in intervention, was allowed ninety days in which to prepare, serve and file Bill of Exceptions on appeal from

the judgment heretofore made and entered herein on May 25, 1912.

Upon motion of Mr. G. J. Lomen, attorney for plaintiff, the record is to show that said time is granted, provided as a matter of right an appeal may be taken from the judgment by intervenor.

And to make the foregoing matters of record, the said petitioner in intervention presents this Bill of Exceptions and prays that the same may be settled and allowed.

ELWOOD BRUNER,

Attorney for Intervenor. [100]

Service of the within proposed Bill of Exceptions is hereby admitted, at Nome, Alaska, this 11th day of June, 1912.

G. J. LOMEN,

Atty. for Plff.

GEO. D. SCHOFIELD,

Atty. for Dft. Campion M. & T. Co.

[Order Approving, etc., Bill of Exceptions.]

The foregoing Bill of Exceptions is hereby approved, allowed and settled.

Dated at Nome, Alaska, this twelfth day of June, A. D. 1912.

CORNELIUS D. MURANE,

District Judge.

[Endorsed]: No. 1176. Dist. Court, Sec. Division, Alaska. Miocene Ditch Company, a Corporation, Plaintiff, vs. Campion Mining & Trading Co., a Corporation, Defendant. Proposed Bill of Exceptions. Filed in the office of the Clerk of the District Court

of Alaska, Second Division, at Nome. Jun. 11, 1912.
John Sundback, Clerk. By J. Allison Bruner,
Deputy.

Refiled in the office of the Clerk of the District
Court of Alaska, Second Division, at Nome. Jun.
12, 1912. John Sundback, Clerk. By ————,
Deputy. [101]

*In the District Court for the District of Alaska, Sec-
ond Division.*

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

Assignment of Errors.

Comes now the petitioner, the Wild Goose Mining
& Trading Company, a corporation, in intervention,
in the above-entitled action, and assigns the following
errors as having been committed by the above-en-
titled court in making and entering herein on May
25th, 1912, its order denying and refusing petitioner
the right to intervene in said action, on which said
errors the said petitioner in intervention intends to
and does rely on its appeal from said order to the
United States Circuit Court of Appeals for the Ninth
Circuit:

1. The Court erred in making its order refusing
and denying petitioner the right to intervene in the

above-entitled action, for the reason that the uncontroverted facts set forth in petitioner's petition in intervention, are sufficient in law to entitle petitioner to an order of the Court, permitting it to intervene as prayed for in its petition.

WHEREFORE, said petitioner prays that said order be reversed and petitioner be allowed to intervene in said action.

ELWOOD BRUNER,

Attorney for Petitioner in Intervention.

Service admitted June 13th, 1912.

G. J. LOMEN,

Attorney for Plaintiff.

GEO. D. SCHOFIELD,

Attorney for Defendant Campion Mining & Trading Company. [102]

[Endorsed]: No. 1176. Dist. Court, Sec. Division, Alaska. Miocene Ditch Company, Plff., vs. Campion Mining & Trading Company, Dft. Assignment of Errors. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 13, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner, Attorney for Petitioner in Intervention. [103]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,

Defendant.

Petition for an Order Allowing Appeal.

The Wild Goose Mining & Trading Company, the petitioner in intervention in the above-entitled action, feeling itself aggrieved by the order of the above-entitled court, denying and refusing to allow the petitioner to intervene in said action, said order having been made and entered on the 25th day of May, 1912, hereby appeals from said order to the United States Circuit Court of Appeals for the 9th Circuit, and prays the said appeal be allowed.

Dated, at Nome, Alaska, June 13th, 1912.

ELWOOD BRUNER,
Attorney for Petitioner.

[Order Approving Bond on Appeal.]

The foregoing appeal is hereby allowed; the said petitioner in intervention, Wild Goose Mining & Trading Company, to give bond for costs in the sum

126 *Wild Goose Mining and Trading Company*
of \$250.00, to be approved by the undersigned.

Dated, Nome, Alaska, June 13th, 1912.

CORNELIUS D. MURANE,
District Judge.

Service admitted, this 13th day of June, 1912.

G. J. LOMEN,
Attorney for Plaintiff.

GEO. D. SCHOFIELD,
Attorney for Defendant, *Campion Mining & Trading Company*. [104]

[Endorsed]: No. 1176. Dist. Court, Sec. Div., Alaska. *Miocene Ditch Company*, Plff., vs. *Campion Mining & Trading Co.*, Dft. Petition for an Order Allowing Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 13, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner, Attorney for Petitioner in Intervention. [105]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY, a
Corporation,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS
that we, *Wild Goose Mining & Trading Company*, a

corporation, as principal, and G. R. Jackson and J. V. Sheldon, sureties, are held and firmly bound unto the Miocene Ditch Company, a corporation, plaintiff in the above-entitled action, and Champion Mining & Trading Company, a corporation, defendant in said action, in the sum of Two Hundred and Fifty Dollars (\$250), for the payment of which, well and truly to be made, we bind ourselves and our and each of our heirs, executors, administrators and assigns, firmly by these presents.

SEALED with our seals, and dated this 12th day of June, A. D. 1912.

WHEREAS, lately, at a session of the United States District Court for the District of Alaska, Second Division, in an action pending in said Court, between Miocene Ditch Company, a corporation, as plaintiff, and Champion Mining & Trading Company, a corporation, defendant, an order was made in said action, whereby petitioner Wild Goose Mining & Trading Company was denied the right to intervene either as plaintiff or defendant in said action, and the said petitioner in intervention, Wild Goose Mining & Trading Company, having obtained an order from the said District Court, allowing an appeal to the United States Circuit Court of Appeals for the 9th [106] Circuit, and the citation to said Miocene Ditch Company, a corporation, plaintiff in said action, and to said Champion Mining & Trading Company, a corporation, defendant in said action;

NOW, THEREFORE, the condition of the above obligation is such that if the said Wild Goose Min-

ing & Trading Company, said petitioner in intervention, shall prosecute its said appeal to effect and answer all costs if it fails to make its plea good, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

WILD GOOSE MINING & TRADING
COMPANY,

By J. DENNIS ARNOLD, Pres. [Seal]

G. R. JACKSON, [Seal]

J. V. SHELDON, [Seal]

Sureties.

United States of America,

District of Alaska,—ss.

G. R. Jackson and J. V. Sheldon, being first duly sworn, each deposes and says: That he is worth the sum of \$250.00 over and above all debts and liabilities, and exclusive of property exempt from execution.

G. R. JACKSON.

J. V. SHELDON.

Subscribed and sworn to before me, this 13th day of June, 1912.

[Notarial Seal]

O. D. COCHRAN,

Notary Public for Alaska, Residing in Nome.

On this 13 day of June, 1912, the foregoing bond being presented in open court, is hereby approved.

CORNELIUS D. MURANE,

District Judge.

OK.—G. J. L. [107]

[Endorsed]: No. 1176. Dist. Court, Sec. Div., Alaska. Miocene Ditch Company, a Corporation,

Plff., vs. Campion Mining & Trading Co., Dft. Bond on Appeal. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 13, 1912. John Sundback, Clerk. By J. Allison Bruner, Deputy. Elwood Bruner, Attorney for Petitioner in Intervention. [108]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY,
a Corporation,

Defendant.

Order [Extending Time for Filing, etc., Transcript on Appeal].

GOOD CAUSE appearing therefor, it is hereby

ORDERED, that the time for filing and docketing the Transcript on Appeal in the above-entitled cause, in the office of the Clerk of the Circuit Court of Appeals for the Ninth Circuit, be, and hereby is, extended to and including the 1st day of September, A. D. 1912.

Dated Nome, Alaska, June 13, 1912.

CORNELIUS D. MURANE,
District Judge.

[Endorsed]: No. 1176. Dist. Court, Sec. Div., Alaska. Miocene Ditch Company, a Corporation, Plaintiff, vs. Campion Mining & Trading Company, Defendant. Order. Filed in the office of the Clerk

130 *Wild Goose Mining and Trading Company*
of the District Court of Alaska, Second Division, at
Nome. Jun. 13, 1912. John Sundback, Clerk. By
J. Allison Bruner, Deputy. Elwood Bruner, Attor-
ney for Petitioner in Intervention. [109]

UNITED STATES OF AMERICA.

District Court, District of Alaska, Second Division.

Cause No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION et al.,

Defendants.

Praeipice [for Transcript on Appeal].

To the Clerk of the Above-entitled Court:

You will please make transcript of record on ap-
peal, including Bill of Exceptions and all appeal
papers.

ELWOOD BRUNER,
Attorney for Petitioner in Intervention.

[Endorsed]: Cause No. 1176. District Court, Dis-
trict of Alaska, Second Division. Miocene Ditch
Company, a Corporation, Plaintiff, vs. T. A. Cam-
pion et al., Defendants. Praeipice. Filed in the office
of the Clerk of the District Court of Alaska, Second
Division, at Nome. Jun. 14, 1912. John Sundback,
Clerk. By J. A. Bruner, Deputy. [110]

In the District Court for the District of Alaska, Second Division.

No. 1176.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

T. A. CAMPION and the CAMPION MINING
AND TRADING COMPANY, a Corporation,
Defendants.

Clerk's Certificate [to Transcript of Record].

I, John Sundback, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 110, both inclusive, are a true and exact transcript of the Bill of Exceptions (including pleadings, etc.), Assignment of Errors, Petition for an Order Allowing Appeal and Order Allowing Appeal, Bond on Appeal, Order Enlarging Time to Docket Transcript on Appeal and Praecipe for Transcript on Appeal, in the case of Miocene Ditch Company, a Corporation, Plaintiff, vs. T. A. Campion et al., Defendants, No. 1176—Civil, this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Citation in the above-entitled cause is attached to this transcript.

Cost of transcript \$42.05, paid by Elwood Bruner, attorney for petitioner in intervention.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said court this 19th day of June, A. D. 1912.

[Seal]

J. SUNDBACK,
Clerk. [111]

In the District Court for the District of Alaska, Second Division.

MIOCENE DITCH COMPANY, a Corporation,
Plaintiff,

vs.

CAMPION MINING & TRADING COMPANY,
a Corporation,
Defendant.

Citation.

United States of America,
District of Alaska,—ss.

The President of the United States of America, to
Miocene Ditch Company, a Corporation, Plaintiff
Above Named, and to Campion Mining &
Trading Company, a Corporation, Defendant
Above Named, Greeting:

YOU ARE HEREBY cited and admonished to be
and appear at the United States Circuit Court of
Appeals for the 9th Circuit, to be held at the city
of San Francisco, in the State of California, on the
12th day of July, 1912, pursuant to an appeal filed
in the Clerk's office of the District Court for the Dis-
trict of Alaska, Second Division, wherein Wild Goose
Mining & Trading Company is appellant, and you,
said Miocene Ditch Company, a corporation, and
Campion Mining & Trading Company, a corporation,

are appellees, to show cause, if any there be, why an order denying petitioner the right to intervene in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 13th [112] day of June, A. D. 1912, and of the Independence of the United States the one hundred and thirty-sixth.

CORNELIUS D. MURANE,
Judge of the District Court for the District of
Alaska, Second Division.

Attest: J. SUNDBACK,
Clerk of the District Court for the District of Alaska,
Second Division.

Personal service of the foregoing citation, made on me, and receipt of a copy thereof, admitted this 13th day of June, A. D. 1912.

G. J. LOMEN,
Attorney for Plaintiff, Miocene Ditch Company.
GEO. D. SCHOFIELD,
Attorney for Defendant, Campion Mining & Trading
Company. [113]

[Endorsed]: No. 1176. Dist. Court, Sec. Div.,
Alaska, Miocene Ditch Company, Plff., vs. Campion
Mining & Trad. Co., Dft. Citation. [114]

[Endorsed]: No. 2174. United States Circuit Court of Appeals for the Ninth Circuit. Wild Goose Mining & Trading Company, a Corporation, Appellant, vs. The Miocene Ditch Company, a Corporation, and Campion Mining & Trading Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Received July 12, 1912.

F. D. MONCKTON,
Clerk.

Filed August 20, 1912.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

89 By Meredith Sawyer,
Deputy Clerk.

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